IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 402

UNITED STATES OF AMERICA,

Petitioner,

—v.—

SHELDON A. KEY,

Trustee.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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BANKRUPTCY DOCKET

UNITED STATES DISTRICT COURT

WILLIAM E. STECKLER, JUDGE
1569 Bktcy

D. C. Form No. 117A Rev.

In the matter of

HANCOCK-TRUCKING, INC. DEBTOR, (See Bktcy Docket), Date, dd;Name or Receipt No., Balance brought fwd; Rec. 30.00

STATISTICAL RECORD

J.S. 24 mailed
J.S. 19 mailed

Referee:

Paul A. Pfister

Trustee:
& Receiver—Sheldon A. Key, Fletcher Trust Building, Indianapolis, Indiana
Bamberger & Feibleman, Attorneys for Trustee, 102 E. Market Street, Indianapolis, Indiana

DATE	PROCEEDINGS
3/ 5/62	Frances Belder II, J. Beldler Camp, and Arthur G. Halverson, as Trsutees [sic] of the Francis Beldler Charitable Trust Created under the Last Will and Testament of Francis Beldler, Deceased, and American Telephone and Telegraph Company, Chicago & Eastern Illinois Railroad Company and Monon Railroad, file petition to amend plan of reorganization and to direct Trustee to take property and assets of debtor with proof of service.
3/16/62	Order entered directing Trustee to Retake Property and Assets of Debtor. (SE) O.B. Vol. II, Page 391.

* * * *

DATE	PROCEEDINGS
8/10/62	Court grants Trustee's petition to employ an auctioneer and to sell the assets of debtor located at Evansville, Indiana. Ordered that the Trustee is authorized to sell free and clear of all valid liens personal property belonging this estate and located in Evansville, and said Trustee is authorized to engage Continental Industries, Division of Continental Finance Corp. as auctioneer; Ordered that proceed from the sale of the items shall be held by Trustee in a special trust until such time as the rights thereto between the Trustee and National Leasing Co., Inc. have been determined; Ordered that the Trustee make due report of his actions under this order, and further Ordered that the auction sale of said property is hereby approved, provided that the amount received therefor is not less than 75% of its appraised value. (SE) See entry for other orders to Auctioneer in re sale of said assets. Court enters order approving sale of operating rights to Hennis Freight Lines, Inc. (SE)
	* * * *
6/23/67	Trustee fi petition to approve modification agreement of sale of operating rights and to fix time of hearing on plan of reorganization. Trustee fi petition to classify creditors and stockholders; proposal of amended plan; and Report of Operations from April 1, 1967 to April 30, 1967.
7/ 3/67	Court enters order fixing hearing under Sec. 169 and 236(2) and for approval of modification agreement. Hearing set for Aug. 7, 1967, at 2:00 P.M., Indpols., Ind. Court enters order classifying creditors and stockholders.
	* * * *
8/ 7/67	Ohio Fast Freight, Inc. fi objections to approval of plan.
	* * * *

DATE	PROCEEDINGS
8/18/67	Court GRANTS Trustee's Motion for Continuance of hearing set for August 21, 1967. Cause reset for hearing on Sept. 7, 1967, at 9:30 A.M.
9/14/67	Trustee fi report of operations from June 1, 1967 to June 30, 1967. Trustee fi report of operations from July 1, 1967 to July 31, 1967. Trustee fi memorandum in support of approval of the Trustee's amended plan or reorganization in regard to tax claims by the Government.
9/15/67	Court enters order approving sale of Indiana intrastate operating authority.
9/18/67	Gov't. fi memorandum brief in regard to tax claim of Government.
9/21/67	Court enters order approving modification agreement of sale of operating rights and approval of amended plan of reorganization.
9/28/67	Court enters Notice to Secretary of Treasury to Accept or Reject amended plan for reorganization.
10/12/67	Marjory H. Schlamp fi Affidavit of Mailing Notice to all Creditors of Hancock-Trucking, Inc., Amended Plan of Reorganization, Summary of Trustee's Amended Plan of Reorganization, Statement of Assets and Liabilities, etc.
	* * * *
11/20/67	Trustee fi Notice of Rejection of Amended Plan of Reorganization, etc.
11/22/67	Order entered continuing hearing on confirmation. Hearing continued to December 8, 1967.
	* * * *
12/19/67	Order entered Confirming Plan.
1/26/68	United States Fi Notice of Appeal.
	* * * *

DATE	PROCEEDINGS
2/ 7/68	Trustee fi Petition to Amend Schedule of Liabilities and Claims from Participation. Trustee fi Petition to Offset Claims against the United States of America. Trustee fi Objections to Claim of Firemen's Fund Insurance Company and to Related Claims. Trustee files Petition to Clarify and Allow Claims Relating to Highway Use Tax.

* * * *

RELEVANT DOCKET ENTRIES IN COURT OF APPEALS

DATE	
2/27/69	Opinion, Gordon, Dist. Ct. J.
2/27/69	Judgment

FORM 2317

U. S. Treasury Department—Internal Revenue Service

PROOF OF CLAIM FOR INTERNAL REVENUE TAXES

IN THE AMENDED CONSOLIDATED COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

Docket No. 1569-B

Filed Aug 7 1962, Paul A. Pfister, Referee in Bankruptcy

IN THE MATTER OF:

HANCOCK TRUCKING, INC., Evansville, Indiana

TYPE OF PROCEEDING:

Reorganization Chapter X
Claim of the United States for Internal Revenue Taxes

The undersigned officer of the Internal Revenue Service, a duly authorized agent of the United States in this behalf, being duly sworn, deposes and says that:

1. HANCOCK TRUCKING, INC., is justly and truly indebted to the United States in the sum of $376,768.61 with interest thereon as hereinafter stated;

2. The said debt is for taxes due under the internal revenue laws of the United States as follows:

Balance of tax due on Judgment entered in original Chapter X Proceeding under date of July 30, 1956.

Kind of Tax And Period	Reference No.	Amount Due	Remarks	Date Tax Lien Arose
Principal		$134,055.03*		
Accrued interest		47,508.30		
		$181,563.333	*Daily interest rate is $21.4488	
New Liabilities				
Withholding Tax				
1st Qtr. 1961—Bal. of tax		$ 27,043.19*		9-1-61
Interest to 3-6-62		1,383.04		
2nd Qtr. 1961		64,683.65*		9-1-61
Interest to 3-6-62		2,327.43		
3rd Qtr. 1961		53,083.35*		11-16-61
Interest to 3-6-62		1,110.38		
4th Qtr. 1961—Bal. of tax		19,735.46*		2-14-62
Interest to 3-6-62		110.27		
1st Qtr. 1962—Bal. of tax		10,493.86		4-23-62
Excise Tax				
Highway Use Tax—1961		11,490.00*		10-20-61
Interest to 3-6-62		353.32		
4th Qtr. 1961—Bal. of tax		142.68		3-2-62
1st Qtr. 1962		84.36		4-20-62
Unemployment Tax				
1961		2,770.22		4-6-62
1961		394.07	American Leasing Co., Inc.	3-16-62
		$195,205.28		
Total liability due		$376,768.61	*Daily interest rate on $176,035.65 is $28.1657	

3. No part of said debt has been paid and the same is now due and payable at the Office of the District Director of Internal Revenue;

4. There are no set-offs or counterclaims to said debt;

5. Except for the statutory tax liens which arose on the dates above stated, the United States does not hold, to the deponent's knowledge or belief, any security or securities for said debt; except as shown on the sheet attached to this claim;

6. No note or other negotiable instrument has been received for said debt or any part thereof, nor has any judgment been rendered with respect to said debt, and

7. Said debt has priority and must be paid in full in advance of distribution to creditors as and to the extent provided by law:

IN BANKRUPTCY ACT PROCEEDINGS see Sections 64, 77e, 199, 337(2), 455, and 659 of the Bankruptcy Act (11 U.S.C. 104, 205(e), 599, 737(2), 855, and 1059).

IN OTHER PROCEEDINGS see Section 3466 of the Revised Statutes (31 U.S.C. 191). Also, attention is invited to Section 3467 (31 U.S.C. 192) with respect to the personal liability of any executor, administrator, or other person who fails to pay the claims of the United States in accordance with their priority.

August 3, 1962

/s/ HELEN C. WILDE

Chief, Special Procedures Section
Office of the District Director of Internal Revenue

P.O. Box 348
Indianapolis, Indiana

Hancock Trucking, Incorporated, 2330 Victory Parkway, Cincinnati, Ohio, on October 11, 1961, deposited with the District Director of Internal Revenue, Indianapolis, Indiana, as collateral for the payment of federal tax liability accrued during the first quarter, 1961, and subsequent periods, including Federal Income Tax Withheld at Source, Federal Insurance Contributions Tax, Federal Unemployment Tax, and Excise Tax, the following certificates:

1. Interstate Commerce Commission Evidence of Issue of Certificate of Public Convience and Necessity No. MC-25567 Sub 8, Sub 13, Sub 15, Sub 16,

Sub 17, Sub 18, Sub 19, Sub 20, Sub 23, and copies of Sub 24, Sub 25, Sub 28, Sub 30, Sub 31, Sub 33, Sub 36, Sub 37, Sub 38, Sub 39, Sub 40, and Sub 41.

2. Certified Copy of State of Indiana Certificate of Public Convenience and Necessity Certificate No. 311-A, 311-A-8, 311-A-9, 311-A-10, 312-A, 312-A-12, 312-A-13, 312-A-14, 312-A-15, and 312-A-16.
3. Certified copy of State of Illinois Certificate of Public Convenience and Necessity as a Common Carrier of Property by Motor Vehicle, File Number 8124MC.

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA

[Caption Omitted]

Order Approving Sale of Operating Rights to Hennis Freight Lines, Inc.

At Indianapolis, Indiana, on the 6th day of August, 1962, hearing was held before the undersigned on the petition of Sheldon A. Key, trustee herein, to approve the sale of the operating rights of the debtor to Hennis Freight Lines, Inc., said petition is dated June 20, 1962, and was filed herein on June 25, 1962, and is in the words and figures following, to-wit: (H.I.)

Said hearing was held pursuant to an order of this court dated June 26, 1962, and notice of the relief prayed for was given to the debtor, and to all parties authorized to intervene in the proceedings, including the Securities and Exchange Commission, the Interstate Commerce Commission, the Secretary of the Treasury, the United tSates Attorney, and the Attorney-General of the State of Ohio, pursuant to the order of this court dated June 26, 1962.

At said hearing the trustee appeared in person and by his general counsel, Sigmund J. Beck and James W. Beatty of Bamberger & Feibleman, Indianapolis, Indiana, and by Ferdinand Born, Indianapolis, Indiana, special counsel for Interstate Commerce Commission matters; R. Stanley Lawton, of Ross, McCord, Ice & Miller, Indianapolis, Indiana, appeared for Fruehauf Trailer, a creditor; Bernard Boyle appeared for the District Director of Internal Revenue, the Secretary of the Treasury, and the United States; Russell Fisher, South Bend, Indiana, appeared on behalf of the Board of Directors of Hancock-Trucking, Incorporated; John J. Lokos appeared on behalf of Mark McElroy, the Attorney-General of the State of Ohio; and Jack Rogers of Roberts & Ryder, Indianapolis, Indiana, appeared on behalf of John L. Rigsby a creditor.

And the State of Ohio having filed herein, on August 6, 1962, its objection to the transfer of the operating authority of Sheldon A. Key, trustee of Hancock-Trucking, Incorporated, to Hennis Freight Lines of Winston-Salem, North Carolina, and the court having heard evidence on said petition of the trustee and on the objection of the Attorney-General of the State of Ohio; and having heard counsel representing various interests, and upon all of the proceedings had before me at said hearing, the court now finds the following:

FINDINGS OF FACT

1. That Sheldon A. Key was appointed trustee of Hancock-Trucking, Incorporated, debtor herein, on May 4, 1954; that following confirmation of a plan of reorganization, the trustee transferred the property of Hancock-Trucking, Incorporated to the reorganized debtor on June 1, 1958.

2. That said trustee was revested with the property of the debtor on March 15, 1962, pursuant to an order of this court.

3. That subsequent to June 1, 1958, and prior to March 15, 1962, Hancock-Trucking, Incorporated entered into an agreement for the lease and eventual sale of the operating rights of the debtor to Hennis Freight Lines,

Inc. A copy of said agreement is attached hereto, made a part hereof, and marked Exhibit "A".

4. That both prior and subsequent to March 15, 1962, the trustee and his general counsel actively engaged in negotiations and numerous conversations with various parties besides Hennis Freight Lines regarding the sale of the debtor's operating rights.

5. That neither the debtor nor the trustee or his counsel has ever been offered more for the operating rights of Hancock-Trucking, Incorporated, than that which Hennis Freight Lines, Inc., has agreed to pay in its agreement with the debtor.

6. That on June 25, 1962, the trustee filed a petition in these proceedings for authority to affirm the sale of the operating rights of the debtor to Hennis Freight Lines, Inc.; that a copy of said petition was mailed to the Attorney-General of the State of Ohio.

7. That a detailed notice of the trustee's petition for authority to affirm the agreement between Hancock-Trucking, Incorporated and Hennis Freight Lines, Inc., and of a hearing thereon to be held on August 6, 1962, was mailed to all creditors, stockholders and other parties in interest, including the Attorney-General of the State of Ohio, on July 10, 1962; said notice contained the basic terms of the contract including the purchase price and manner of payment.

8. That no new offers to purchase the operating rights of Hancock-Trucking, Incorporated, were submitted to the trustee or his counsel following the mailing of said notice and prior to the hearing before this court on August 6, 1962.

9. That other than the objection of the Attorney-General of the State of Ohio, which was filed immediately prior to the hearing on August 6, 1962, no objections to the trustee's petition have been filed by any creditor, stockholder, or other party in interest.

10. That Hennis Freight Lines, Inc., has preserved the operating rights of Hancock-Trucking, Incorporated, by leasing these rights from the trustee and operating under them during these proceedings.

11. That the purchase price to which Hennis Freight Lines, Inc., has agreed is fair and reasonable.

CONCLUSIONS OF LAW

1. That it would be in the best interests of this estate for the trustee to be authorized to affirm the sale of the operating rights of Hancock-Trucking, Incorporated, to Hennis Freight Lines, Inc.

2. That the objection of Mark McElroy, Attorney-General of the State of Ohio, should be overruled (1) on the grounds that the trustee has demonstrated that it would be in the best interests of this estate to affirm the sale of the operating rights to Hennis Freight Lines, Inc., and the Attorney-General of the State of Ohio has offered no evidence that said sale would not be in the best interests of this estate, and (2) on the grounds that the objection was untimely.

And, accordingly it is

ORDERED that the trustee be, and he hereby is, authorized to affirm the contract of sale of the operating rights of the debtor to Hennis Freight Lines, Inc., and it is further

ORDERED that the trustee be, and he hereby is, authorized and directed to take such steps as are necessary to conclude said sale; and it is further

ORDERED that the objection filed herein by Mark McElroy, Attorney-General for the State of Ohio, be, and it hereby is, overruled.

DATED this 10th day of August, 1962.

WILLIAM E. STECKLER,
District Judge

[Distribution omitted]

EXHIBIT A

THIS AGREEMENT, made in South Bend, Indiana, this the 15th day of February, 1962, by and between Hennis Freight Lines, Incorporated, a North Carolina corporation with its principal office in Winston-Salem, North Carolina, hereinafter referred to as "Hennis", and Hancock-Trucking, Incorporated, an Indiana corporation with its principal place of business in Evansville, Indiana, hereinafter referred to as "Hancock".

WITNESSETH:

WHEREAS, Hancock is a corporation engaged in the business of a motor common carrier pursuant to certificates issued by the Interstate Commerce Commission in Docket No. MC 2-5567 and sub-numbered dockets; and

WHEREAS, Hancock has for many years rendered outstanding service as a motor common carrier of property on a profitable basis, but during recent years it has suffered losses and at the present time is losing money on its operation; as of November 30, 1961 the operating loss of Hancock was One Million Ninety Three Thousand Seventy Three Dollars and Thirty Cents ($1,093,073.30).

WHEREAS, the operations of Hancock are unprofitable, and the management provided by the Stockholders is unable to arrest the operating losses and to properly finance its operations, and as a consequence, its financial obligations have become greater than it can continue to meet, and Hancock and its Stockholders are in danger of losing control and management of their business because of defaults in the payments of its financial obligations; and

WHEREAS, the officials of Hancock have approached Hennis and requested Hennis to immediately lease its operating authority and to purchase the said operating authority, all with the prior approval of the Interstate Commerce Commission; and

WHEREAS, it is the desire of all the parties hereto to enter into this agreement, subject to the approval of

the Interstate Commerce Commission, and to make application to said Commission for authority for Hennis to lease for a period of one year, with option to renew for another year, the operating authority, and simultaneous therewith to make application to said Commission for emergency temporary authority to lease the said authority, and to make application to said Commission for Hennis to buy all the operating authority of Hancock and to consolidate said operating authority with the authority now held by Hennis.

Now, therefore, in consideration of the premises and the mutual agreements, and of the warranties and representations herein contained, it is agreed between the parties hereto as follows:

1. APPROVAL OF THE INTERSTATE COMMERCE COMMISSION.

1.1. The transactions agreed to herein are subject to the approval of the Interstate Commerce Commission and other regulatory bodies having jurisdiction thereof, and no liability shall arise hereunder until said Commission issues an order granting temporary authority as requested in the application of the parties.

2. PROPERTY BEING LEASED, SOLD, AND PURCHASED AND THE PRICE THEREOF.

2.1. The property being leased and sold by Hancock and leased and purchased from Hancock by Hennis is all of the interstate operating authority owned and held by Hancock, including, but not limited to, the authority granted in Docket No. MC 2-5567, and sub-numbered dockets.

2.2. The price at which Hancock agrees to sell and Hennis agrees to buy the said operating authority is Seven Hundred Sixty-Five Thousand Dollars ($765,000.00), with interest at 8% as hereinafter shown in paragraph 2.3(c).

2.3. Said purchase price is to be paid as follows:

(a) The sum of Twenty-Five Thousand Dollars ($25,000.00) has been deposited in THE AMERICAN BANK AND TRUST COMPANY, South Bend, Indiana, as Escrow Agent as of the date of the signing of this contract. This sum of Twenty-Five Thousand Dollars ($25,000.00) shall be released and paid over to Hancock by the bank within five days from the date Hennis receives notice from the Interstate Commerce Commission of the final order approving the sale and purchase of all the interstate operating authority now held by Hancock.

(b) Two Hundred Seventy-Five Thousand Dollars ($275,000.00) cash to be paid as follows: Seventy-Five Thousand Dollars ($75,000.00) within thirty (30) days from the date upon which Hennis receives notice of the final order of the Interstate Commerce Commission approving the sale and purchase of all interstate operating authority now held by Hancock; One Hunderd Thousand Dollars ($100,000.00) within sixty (60) Days from the date of the aforesaid final order; and One Hundred Thousand Dollars ($100,000.00) within ninety (90) days from the date of the aforesaid final order.

(c) The balance of the purchase price; principal sum of Four Hunderd Sixty-Five Thousand Dollars ($465,000.00), plus interest of Two Hunderd Thirty-Five Thousand Dollars ($235,000.00) said interest having been computed at the rate of 8% per annum for the first five year period from date of the note, with all of the interest on the principal sum to be paid within five years from the date of the note, with no interest on the unpaid balance thereafter; shall be evidenced by a note of Hennis to be payable in seventy eight (78) monthly installments, the first seventy seven (77) monthly installments to be in the sum of Nine Thousand Dollars ($9,000.00) and the last monthly installment to be in the sum of Seven Thousand Dollars ($7,000.00); the first installment shall become due and payable thirty (30) days from the date of final approval by the Interstate Commerce Commission of the purchase of said operating authority; said note and unpaid balance thereon to be secured by a chattel mortgage on the said operating authority.

2.4 It is mutually agreed between the parties hereto that the above described note evidencing the unpaid balance of the purchase price of said operating authority shall be dated as of the date of the consummation of the sale and purchase pursuant to final order of the Interstate Commerce Commission authorizing the same.

3. HANCOCK COVENANTS, AGREES, REPRESENTS AND WARRANTS:

3.1. That Hancock owns and operates Certificate No. MC 2-5567 issued by the Interstate Commerce Commission, and that Hancock has a right to sell the same subject to the approval of the Interstate Commerce Commission, that there are now no proceedings pending before the Interstate Commerce Commission affecting said certificate of operating authority and that if any such proceedings are instituted, Hancock will have said proceedings dismissed and finally terminated so as not to in any way adversely affect said certificate.

3.2 Hancock represents and warrants that no provisions in the Articles of Incorporation or By-Laws of Hancock, and no law or regulation of the state of its incorporation prohibits, limits, or otherwise inhibits the right or authority of Hancock to execute this agreement and to sell its operating authority, and that the execution of this agreement and the lease and sale of its said operating authority is in accord with said Articles of Incorporation and By-Laws and by authority of the Board of Directors and Stockholders of Hancock.

3.3. Hancock covenants to furnish promptly to Hennis all information, records and other materials required in connection with the completion and filing of applications to the Interstate Commerce Commission and any and all other regulatory agencies having jurisdiction for the approval of the transactions covered by this agreement, to execute all applications and all other papers necessary to carry out this agreement or required or useful in connection with said applications, and to cause their officers, directors and agents to exercise their best efforts to secure the approval of the Interstate Commerce Commis-

sion, and of any and all other regulatory agencies having jurisdiction, to all the applications filed.

3.4. Hancock agrees that it is for the best interest of all parties concerned that the said operating authority of Hancock be leased to and operated by Hennis as quickly as possible under emergency temporary authority granted by the Interstate Commerce Commission, and that it is necessary and for the best interest of all parties concerned that Hennis pay installements of rent for the use of said franchise as hereinafter provided.

3.5. Hancock represents and warrants that there are no known violations of any state or federal laws or rules and regulations of the Interstate Commerce Commission which will lead to any disciplinary action that will in any way adversely affect the certificate of public convenience and necessity which is being sold hereunder.

3.6. Hancock covenants, warrants and represents to Hennis that the copies of the operating authority of Hancock which it has furnished to Hennis, said authorities having been issued by the Commission in Docket No. MC 2-5567 and sub-numbered dockets, is presently effective and in good standing, and free from any liens and encumbrances of any kind, and that there are no suits, complaints or other proceedings in existence or threatening which, if determined adversely to Hancock, would diminish the scope or value of said operating authority, and that it will, upon the granting of final permanent authority by the Interstate Commerce Commission, transfer said operating authority to Hennis.

3.7. Upon receipt of a copy of the order from the Interstate Commerce Commission granting authority for Hancock to lease the said operating authority to Hennis, Hancock covenants and agrees as follows:

(a) Within five (5) days from the receipt of a copy of said order, Hancock shall lease all of its interstate operating authority to Hennis, said lease to be upon the following terms and conditions:

(1) That Hennis shall pay Hancock a monthly rental of Two Thousand Dollars ($2,000.00) per month for the

operating authority, said monthly payments to be made by Hennis to Hancock beginning as of the date of consummation of the lease agreement and each thirty (30) days thereafter until the lease terminates.

(2) The lease on the said operating authority to remain in full force and effect until such time as the parties hereto receive from the Interstate Commerce Commission a final order on the BMC 44 Application to be filed in accordance herewith for authority to sell and transfer said interstate operating authority to Hennis.

(b) To cooperate with Hennis to the end that the transfer of the operating authority may be transferred from Hancock to Hennis without any loss of service to the shipping public.

4. HENNIS COVENANTS AND AGREES AS FOLLOWS:

4.1. Hennis covenants and agrees to cooperate with Hancock in the preparation, filing and prosecution of the applications to the Interstate Commerce Commission and any other regulatory bodies having jurisdiction for authority to consummate the transaction, which applications are referred to hereinabove.

4.2. Hennis covenants and agrees to furnish all information required of it in the preparation of said applications to said Commission and to join with Hancock in the preparation, execution, filing and prosecution of all applications to said Commission to obtain approval and authorization for all the transactions provided for herein.

4.3. In the event temporary authority is granted by the Interstate Commerce Commission for Hennis to lease the operating authority of Hancock, Hennis covenants and agrees as follows:

(a) To lease the operating authority from Hancock and to pay the rent therefor specified in Paragraph 3.7 (a) (1).

4.4. In the event the Interstate Commerce Commission approves the permanent application for Hennis to purchase the operating authority of Hancock, then, and in that event, Hennis covenants and agrees as follows:

(a) Within thirty (30) days following the receipt of the final order of the Interstate Commerce Commission approving the sale and purchase of said interstate operating authority, to purchase the same and to execute notes evidencing the balance of the purchase price as herein provided.

4.5. In the event the Interstate Commerce Commission does not approve the permanent application of the parties hereto for Hennis to purchase the interstate operating authority of Hancock, then, and in that event, Hennis and Hancock covenant and agree as follows:

(a) If there are any new facts, information or evidence, which in the opinion of Hennis and/or Hancock should be submitted to said Commission, the parties hereto shall petition the said Commission for reconsideration and/or rehearing and Hennis shall have the right to continue to lease the operating authority of Hancock hereunder as long as permitted to do so by said Commission.

(b) In the event no petition for reconsideration or rehearing is filed by the said parties, or upon final order of said Commission on said petition disallowing the purchase and sale of said interstate operating authority, the lease of said properties hereinabove provided for shall terminate at the convenience of Hennis within thirty (30) days from the receipt of the final order of the Interstate Commerce Commission.

5. MISCELLANEOUS PROVISIONS

5.1. It is mutually understood and agreed between the parties hereto that they shall join in an application to the Interstate Commerce Commission and all other regulatory bodies having jurisdiction, for Hennis to lease and purchase the interstate operating authority of Hancock.

5.2. It is mutually agreed between the parties hereto that they will cooperate in the prompt furnishing of all information, records and other materials required in connection with the completion, filing and prosecution of all of said applications for temporary authority and for permanent authority herein referred to and that they will

exercise their best efforts to secure the approval of said Commission of all said applications.

5.3. In the event temporary authority is not granted by the Interstate Commerce Commission for Hennis to lease the operating franchise of Hancock, this agreement and the permanent application shall continue in full force, but Hennis may on five days' written notice to Hancock and to the Interstate Commerce Commission fully terminate and dismiss this agreement and the permanent application, without liability.

5.4. It is mutually agreed between the parties hereto that in the event the Interstate Commerce Commission should impose any objectionable conditions or limitations upon the operating rights of Hancock, which do not presently exist in said operating rights, that Hennis may elect to terminate this agreement without liability to it and may refuse to consummate any order of the Interstate Commerce Commission which may be entered pursuant to the applications to be made under the provisions of this agreement.

5.5. In the event the Interstate Commerce Commission should require cancellation or revocation of any portion of the operating rights of Hancock as a condition precedent to the consummation of an order of said Commission, that the purchase price shall be reduced in direct ratio to the number of miles so ordered to be cancelled or revoked.

5.6 On or about May 4, 1954 Mr. Sheldon A. Key was appointed Trustee in proceedings for reorganization of Hancock-Trucking, Incorporated, in the United States District Court, Southern District of Indiana, Evansville Division. This reorganization proceedings is still pending in the aforesaid United States District Court. In the event it is determined that this contract for the sale of the operating authority of Hancock to Hennis requires the consent of the United States District Court and the Trustee appointed by said Court, Hancock will immediately undertake to procure from said Court an order approving and ratifying this contract of purchase.

5.7. Nothing contained in this agreement shall be deemed or construed to be a joint venture or partnership between the parties hereto.

5.8. This agreement may not be assigned by either of the parties hereto without the prior written consent of the other party, but it is binding and effective upon the successors and assigns of the parties hereto.

5.9. The parties hereto mutually agree that the proper and appropriate corporate action shall be taken by the Stockholders and Directors of Hennis and Hancock.

IN WITNESS WHEREOF, Hennis Freight Lines, Inc. and Hancock-Trucking, Incorporated, have caused this instrument to be signed and the corporate seals attached, by their proper officers, who have first been duly authorized by their Board of Directors, all as of the day and year first above written.

HENNIS FREIGHT LINES, INC.

By /s/ S. H. MITCHELL
President

ATTEST:

/s/ B. C. BRANDON
Secretary

[CORPORATE SEAL]

HANCOCK-TRUCKING,
INCORPORATED

By /s/ JAMES H. LAHEY
President

ATTEST:

/s/ ROBERT M. SHULZ
Secretary

[CORPORATE SEAL]

FORM 2317

U. S. Treasury Department—Internal Revenue Service

PROOF OF CLAIM FOR INTERNAL REVENUE TAXES

Consolidated in Lieu of Supplementals Dated 9-25-62 and 11-9-62

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

Docket No. 1569-B

Filed Mar 8 1963, Paul A. Pfister, Referee in Bankruptcy

IN THE MATTER OF:

HANCOCK TRUCKING, INC., Evansville, Indiana

TYPE OF PROCEEDING:

Reorganization Chapter X
Claim of the United States for Internal Revenue Taxes

The undersigned officer of the Internal Revenue Service, a duly authorized agent of the United States in this behalf, being duly sworn, deposes and says that:

1. HANCOCK TRUCKING, INC., is justly and truly indebted to the United States in the sum of $880.18 with interest thereon as hereinafter stated;

2. The said debt is for taxes due under the internal revenue laws of the United States as follows:

Kind of Tax And Period		Reference No.	Amount Due	Remarks	Date Tax Lien Arose
Unemployment Tax					
Adnl. 1960	ME	8-865010	$492.28	American Leasing Co.	8-3-62
Adnl. 1961	ME	12-865218	83.54	American Leasing Co.	12-28-62
1962		6-880012	304.36	Hancock	
			$880.18	Trucking, Inc.	6-1-62
Claim dated 8-3-62—			$376,768.61		
Claim dated 3-6-63—			880.18		
			$377,648.79		

3. No part of said debt has been paid and the same is now due and payable at the Office of the District Director of Internal Revenue;

4. There are no set-offs or counterclaims to said debt;

5. Except for the statutory tax liens which arose on the dates above stated, the United States does not hold, to the deponent's knowledge or belief, any security or securities for said debt;

6. No note or other negotiable instrument has been received for said debt or any part thereof, nor has any judgment been rendered with respect to said debt, and

7. Said debt has priority and must be paid in full in advance of distribution to creditors as and to the extent provided by law:

IN BANKRUPTCY ACT PROCEEDINGS see Sections 64, 77e, 199, 337(2), 455, and 659 of the Bankruptcy Act (11 U.S.C. 104, 205(e), 599, 737(2), 855, and 1059).

IN OTHER PROCEEDINGS see Section 3466 of the Revised Statutes (31 U.S.C. 191). Also, attention is invited to Section 3467 (31 U.S.C. 192) with respect to the personal liability of any executor, administrator, or other person who fails to pay the claims of the United States in accordance with their priority.

March 6, 1963

/s/ HELEN C. WILDE

Chief, Special Procedures Section
Office of the District Director of Internal Revenue

P.O. Box 348
Indianapolis, Indiana

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

Modification Agreement

Agreement entered into this 20th day of June, 1967 by and between Hennis Freight Lines, Inc. (hereinafter referred to as Hennis) and Sheldon A. Key, as trustee in proceedings for reorganization of Hancock-Trucking, Incorporated (hereinafter referred to as trustee.)

PREMISES

1. Hancock-Trucking, Incorporated (hereinafter referred to as "Hancock") was incorporated under the laws of the State of Indiana on June 23, 1933, and by virtue of certain rights which came to it under the Motor Carrier Act, 1935, and through acquisition of additional rights through purchase and by extension applications to the Interstate Commerce Commission became an active and rather substantial carrier operating in interstate commerce under and by virtue of outstanding certificates of public convenience and necessity issued by the Interstate Commerce Commission in MC-25567 and various subs thereunder.

2. On May 3, 1954, in the United States District Court, Southern District of Indiana, Hancock filed a debtor's petition for reorganiaztion under Chapter X of the Bankruptcy Act, Cause # 1569-B. The court approved the petition and appointed Sheldon A. Key trustee with authority to continue the operations of Hancock and to submit a plan of reorganization. A plan of reorganization was confirmed, and on June 1, 1958, all properties of Hancock were transferred to the reorganized debtor.

3. On February 15, 1962, an agreement was entered into between Hennis and Hancock for the sale by Hancock and the purchase by Hennis of the interstate operating rights of the debtor. A joint application was filed with the Interstate Commerce Commission seeking approval of transfer of such rights under Sec. 5 of the Interstate Commerce Act. Simultaneously with said filing, an ap-

plication was filed by said parties under Sec. 210a (b) of the Interstate Commerce Act for lease by Hennis of the operating rights of Hancock at a monthly rental of $2,000.00 pending final determination of the Sec. 5 application. The application under Sec. 210a (b) was approved March 2, 1962, and Hennis has continuously since on or about March 10, 1962, conducted operations as a common carrier in interstate commerce under the rights leased from Hancock.

4. On March 5, 1962, a creditors' petition was filed in the reorganization court praying that the trustee retake the property of the debtor. On March 15, 1962, this court entered its order directing Sheldon A. Key, as trustee, to retake possession and custody of all the assets and property of the debtor.

5. On August 10, 1962 the reorganization court entered its order affirming the contract of sale between Hennis and Hancock referred to in paragraph 3 above and authorized the trustee to take all steps necessary to consummate the sale.

6. The application under Section 5 of the Interstate Commerce Act was referred to a hearing examiner who submitted a recommended report and order on April 15, 1964, pursuant to which the examiner recommended that the transaction proposed by the parties be approved providing however for a modification imposing certain restrictions on shipments originating from and destined to Detroit, Michigan.

7. The Interstate Commerce Commission, Division 3 issued its decision and order dated March 11, 1965 approving the hearing examiner's report for all intents and purposes.

8. On October 15, 1965 the trustee filed a complaint to enjoin, set aside and annul orders of the Interstate Commerce Commission. This matter came on for hearing before a three judge court and final judgment and decree was entered on January 12, 1967 denying the complaint, dismissing the same and sustaining the order of the Interstate Commerce Commission.

9. The basic contract entered into by and between Hennis and Hancock provides for Hennis to purchase

the interstate operating rights of Hancock for $1,000,000.00 under a deferred method of payment; the contract further provides that should the Commission require cancellation of any portion of the rights to be acquired by Hennis from Hancock, as a condition for approval, the purchase price is to be reduced in direct ratio to the number of miles embraced in the cancelled rights.

10. Hennis has contended that in accordance with the terms of the contract the purchase price should be reduced and has set forth the fact that the restrictions imposed gives rise to a reduction in the purchase price under the provisions of the contract. The trustee has contended that there has been no cancellation or revocation of mileage and that no diminution in purchase price should take place.

In consideration of the foregoing premises the parties have entered into this modification.

TERMS

A. The purchase agreement of February 15, 1962 shall be amended so that paragraph two thereof shall read as follows:

"2. PROPERTY BEING LEASED, SOLD, AND PURCHASED AND THE PRICE THEREOF:

2.1. The property being leased and sold by Hancock and leased and purchased from Hancock by Hennis is all of the interstate operating authority owned and held by Hancock, including, but not limited to, the authority granted in Docket No. MC 2-5567, and sub-numbered dockets.

2.2. The price at which Hancock agrees to sell and Hennis agrees to buy the said operating authority is Nine Hundred Thirty Five Thousand Dollars ($935,000.00), inclusive of principal and interest at Six percent (6%) per annum, subject to reduction as hereinafter shown in paragraph 2.3 (d).

2.3. Said purchase price is to be paid as follows:

(a) The sum of Twenty-Five Thousand Dollars ($25,000.00) has been deposited in THE AMERICAN BANK AND TRUST COMPANY, South Bend, Indiana, as Escrow Agent as of the date of the signing of this contract. This sum of Twenty Five Thousand Dollars ($25,000.00) shall be released and paid over to Hancock by the bank within five days from the date Hennis receives notice from the Interstate Commerce Commission of the final order approving the sale and purchase of all the interstate operating authority now held by Hancock.

(b) Two Hunderd Seventy Five Thosuand Dollars ($275,000.00) cash to be paid as follows: Seventy-Five Thousand Dollars ($75,000.00) within thirty (30) days from the date upon which Hennis receives notice of the final order of the Interstate Commerce Commission approving the sale and purchase of all interstate operating authority now held by Hancock; One Hundred Thousand Dollars ($100,000.00) within sixty (60) days from the date of the aforesaid final order; and One Hundred Thousand Dollars ($100,000.00) within ninety (90) days from the date of the aforesaid final order.

(c) The balance of the purchase price in the sum not to exceed Six Hundred Thirty Five Thousand Dollars ($635,000.00) inclusive of principal and interest at six per cent (6%) per annum on the unpaid balances shall be evidenced by a note of Hennis to be payable in seventy eight (78) equal monthly instalments; the first instalment shall become due and payable thirty (30) days from the date of final approval by the Interstate Commerce Commission on the purchase of said operating authority; said note and unpaid balance thereon to be secured by a chattel mortgage on the said operating authority.

(d) Purchase price in the sum of Nine Hundred Thirty Five Thousand Dollars ($935,000.00) inclusive of interest and principal as hereinabove set forth shall further be reduced in the following fashion: the trustee agrees to submit to the reorganization court an amended plan of reorganization which shall provide inter alia for the payment of all administration and prioroity claims in full without interest and for the settlement and satisfaction of all unsecured claims whether for goods sold and delivered, cargo loss and damage or otherwise, by the payment of twenty percent (20%) of the face amount of said claims; said plan shall also provide that all funds in the hands of the trustee together with the consideration to be furnished under this contract shall be utilized for the carrying out of said amended plan of reorganization and any funds in excess of the amounts needed to satisfy the consideration for said amended plan of reorganization shall redound to the benefit of Hennis and shall be accordingly deducted from the purchase price by application to the note in the amount of Six Hundred Thirty Five Thousand Dollars ($635,000.00) as set forth in 2.c above and the monthly instalments thereunder reduced accordingly.

2.4. It is mutually agreed between the parties hereto that the above described note evidencing the unpaid balance of the purchase price of said operating authority shall be dated as of the date of the consummation of the sale and purchase pursuant to final order of the Interstate Commerce Commission authorizing the same.

B. All other terms and conditions of the agreement entered into February 15, 1962 by and between Hennis and Hancock shall remain in full force and effect.

C. This agreement shall be subject to the approval of the United States District Court, Southern District of

Indiana in the reorganization proceedings now pending of Hancock.

In witness whereof, the parties have hereunto set their hands and seals all as the day and year first above written.

HENNIS FREIGHT LINES, INC.

By /s/ S. H. MITCHELL
President

ATTEST:

B. C. BRANDON
Secretary

/s/ SHELDON A. KEY,
Trustee in Proceedings for Reorganization of Hancock-Trucking, Incorprated Debtor

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

[Caption Omitted]

TRANSCRIPT OF PROCEEDINGS HAD IN THIS MATTER ON SEPTEMBER 7, 1967, BEFORE THE HON. WILLIAM E. STECKLER IN INDIANAPOLIS, INDIANA.

MR. JESSE L. PHIPPS

DIRECT EXAMINATION

QUESTIONS BY MR. BECK:

* * * *

[Tr. 29]

* * * *

17 Q Would you say that the operating authority of Hancock is more valuable today than it was when Hennis originally entered into the temporary authority? A Yes.

* * * *

[Tr. 43]

CROSS EXAMINATION

QUESTIONS BY MR. CLAYCOMBE:

41 Q Mr. Phipps, at the present time you are operating under a lease arrangement, is that correct? A Correct.

42 Q Now, are you operating the full rights of Hancock or are you operating under the restrictions imposed by the I.C.C.? A We're operating the full rights of Hancock at this time.

43 Q You mentioned that at the present time Hennis was making a 1 per cent return on the Hancock revenues. Was that correct? A That is correct, based upon—

44 Q All right. What are the gross revenues against which this 1 per cent is to be applied? A We are attributing approximately $15,000,000 of our present annual revenue volume to the Hancock authority.

45 Q That's this year, or 1966? A For 1966. And 1967 will be comparable to 1966. It will be about the same.

46 Q Then your profit for the year 1966 on the Hancock rights was 1 per cent of $15,000,000. A That is correct.

[Tr. 44]

47 Q Could you give us the gross revenues for the years 1962 through 1965 that you attributed to the Hancock rights? A I would have to give you my estimate. I do not have it at hand: 1962 was a period of gearing up and preparing to develop the authority. We would have approximately $2,000,000 revenue in 1962 as a result of Hancock. In 1963 I would estimate approximately $5,000,000 revenue. In 1963 we began a steel—a leased operation, and in steel. In 1964 I would estimate nine to $10,000,000 of revenue. 1965 ran thirteen-fourteen million. In 1966, around 15,000,000.

48 Q And you expect no further increase then in '67? A No, not in light of conditions, economic conditions and so forth that have existed in 1967.

49 Q Now, generally speaking, have rights increased in value from the year 1962 to the present time? A In my opinion, along with most other things, yes, they have.

50 Q What in your opinion has been the increase in the value of the Hancock rights from 1962 to the present time? A I can answer that from the standpoint of Hennis Freight Lines. At the time of course that we acquired the right to control the authority it had no business. With the business that Hennis has generated on the authority, having developed it to the point where we have passed beyond the break-even point, I think the

authority is worth roughly the investiment that we presently have, insofar as Hennis is concerned, remembering that the business that is on the authority is in Hennis' name: I'd say approximately $3,000,000.

51 Q That would be the present day value of the rights? A To Hennis Freight Lines.

[Tr. 45]

52 Q And how much would it be to the hypothetical trucking company that might want to purchase them? A Here again it would depend, in my opinion, upon the framework that it has. Do they have terminal facilities in the Hancock area of operation? Or do they have to come in and start from scratch insofar as creating a framework? It would be a little difficult for me to give you my opinion without having some information on the operations of the potential purchaser.

[Tr. 46]

* * * *

[Tr. 51]

73 Q Well, let's take Hennis, the overall Hennis operation: How much profit did Hennis make in 1961? Before you got involved with Hancock A May I be excused? I've got a publication in my brief case that would give us this information.

[Tr. 52]

THE COURT: Yes.

(The witness secures a volume.)

A This publication is Tring's Red Book, which is a publication of financial results as reported to the Interstate Commerce Commission by motor carriers. In 1962, on $26,800,000, Hennis netted, after income taxes, $850,000.

74 Q After income taxes? A Yes, sir.

75 Q What about '61? A I don't have '61 available.

76 Q Well, in 1962 you had integrated with the Han-

cock operation. A Right, but it was late '62 before we got geared up and really started expending maximum effort.

77 Q Then would you say that there were no appreciable losses attributable to the Hancock operation in 1962? A I would estimate between two and two hundred and fifty thousand dollars as a result of the Hancock operations in 1962.

[Tr. 53]

78 Q Between—? A Two and two hundred and fifty thousand dollars.

79 Q Between two thousand and two hundred and— A No, no, two hundred thousand and two hundred and fifty thousand dollars.

80 Q A loss. A Yes.

81 Q There is no way that we can get a period to compare, then, before the Hennis integrated with Hancock, that's what I'm trying to get to. A Well, I don't have details with me of 1961. Hennis operated at approximately 92 per cent operating ratio. The—for the year preceding the acquisition of Hancock, which would have been 1961,—I'm sorry, I don't have the figure. I've got some differentials here but I do not have the exact figure with me.

82 Q All right. You have an $850,000 profit after taxes in the year 1962. A Correct.

83 Q How about '63? A In 1963, on thirty-six and a half milion dollars revenue, we had a million two net income after income taxes.

[Tr. 54]

84 Q That was the first full year of integration with the Hancock rights, is that correct? A Right. And I might point out, too, that in 1963 we show a negative income tax of a hundred and twenty-one thousand dollars. In 1963 we did make major additions to our equipment fleet, and the result being a large investment credit as well as excessive amount of depreciation which we claim for tax purposes.

MR. BECK: Excuse me, Mr. Claycombe, I do have something here if you want 1961 that might refresh the witness' recollection.

MR. CLAYCOMBE: Sure.

(Mr. Beck hands documents to the witness.)

THE WITNESS: This is 1962.

MR. BECK: Isn't that December, '62? Oh, I beg your pardon. I'm sorry.

85 Q Now, can you give us the figure for 1964? A 1964, on fourty-four and a half million dollars gross, Hennis netted $573,000.

86 Q And '65? A In '65, on a fifty-one million dollar gross—

THE COURT: Fifty-one?

THE WITNESS: Yes, sir.

THE COURT: All right?

THE WITNESS: Hennis netted a million two hundred and sixty-nine thousand dollars.

87 Q Now, can you tell us why the net was—in 1964, seems to be somewhat off of the curve? A In 1964?

88 Q Yes. You went eight hundred fifty thousand, and a million two; then dropped down to five hundred seventy-three, and back up to a million two. A Well, here again our income tax provision —one reason I pointed out a negative income tax provision for the year 1964 of a hundred and twenty-one thousand dollars? The Interstate Commerce Commission gives no recognition to deferred income taxes, whereas generally accepted accounting principles require that a provision be levied against current year earnings, with the deferred taxes being carried on your statement as a reserve. Because of the I.C.C. accounting requirement you do get a distortion in net income after taxes.

89 Q Well, can you give us the figures then that won't be distorted? What I'm trying to get to, Mr. Phipps, is the overall performance of your company during the years that you say you lost $2,000,000. A All right, if I may—I believe if I were to give you the earnings before income taxes it would eliminate this distortion that is being brought about due to I.C.C. Regulations.

[Tr. 56]

90 Q All right. A In 1962 Hennis Freight Lines earned a million nine hundred fifty thousand dollars before income taxes. In 1963, before income taxes, one million one hundred thousand dollars. In 1964, five hundred and seventy-five thousand dollars. In 1965, one million six hundred twenty-six thousand. In 1966, one million four hundred ninety-four thousand. And in 1966 this one million four hundred ninety-four thousand was earned on a gross revenue of $56,453,000.

91 Q Were there factors other than the acquisition of the Hancock rights which substantially affected the net income of the company? A In 1964 we made an acquisition, adding operating authority in the New England States area to the Hennis operation. That did have some effect on 1964. We made that acquisition in late August of 1964.

[Tr. 57]

MR. CLAYCOMBE: No further questions.

• • • •

[Tr. 60]

MR. THOMAS W. ANDREWS

DIRECT EXAMINATION

QUESTIONS BY MR. BECK:

• • • •

[Tr. 61]

8 Q How long have you been employed by McLean Trucking Company? A Twenty years.

9 Q During your service with McLean Trucking have you had occasion to be involved in the acquisition of any operating authorities? A Yes.

10 Q And have you had occasion to value operating authorities for the purposes of acquisition, either by McLean or for other companies? A Yes, I have been a party with my company in evaluating various authorities.

11 Q Were you involved in the acquisition of Carolina Motor Express by McLean? A Yes.

[Tr. 62]

12 Q Were you involved in the acquisition of Hayes Motor Freight Lines? A Hayes Freight Lines, Inc., yes.

13 Q And have you had occasion to review the certificate of authority issued by the Interstate Commerce Commission to Hancock Trucking, Inc.? A Yes.

14 Q Would you say that the Carolina Motor Express or Hayes, were somewhat comparable to the area covered by Hancock? A Hayes Freight Lines is practically an overlay of the Hancock operation.

15 Q Have you had an opportunity to review the Hancock authority and make a determination as to what the value of that authority would be to an outside purchaser, if one were available as of today? A Yes, I have looked at it and arrived at a figure of $850,000.

16 Q And on what do you base that figure? A Well, the authority is, as you have described in the central states, it has now certain restrictions placed against it, in very key market areas, and the authority had gone down to the point of nothing. And that's the basic reasons for my answer.

[Tr. 63]

17 Q You've heard the testimony of Mr. Phipps in Court. A Yes.

18 Q Would you say that the valuation of approximately $900,000 to be paid by Hennis for this operating authority is a fair and reasonable one? Including the stretch-out—the terms including principal and interest of the $900,000? A In my opinion it is an equitable offer, including the stretch-out, because it's basically a common practice to stretch out payments in this type of a transaction.

MR. BECK: No further questions.

* * * *

MR. SHELDON A. KEY.

DIRECT EXAMINATION

QUESTIONS BY MR. BECK:

* * * *

[Tr. 83]

11 Q In August of 1962 you filed a petition of course for the approval of the contract for the sale by Hancock to Hennis, and at that particular time you testified and you submitted in your petition that the sale was reasonable, and it was approved by the Court. A Yes.

12 Q Since that time you have presented a petition to the Court, at the present time, before the Court today on a hearing, for a modification of that original purchase price due to the restrictions imposed by the Interstate Commerce Commission. A That's right.

13 Q Would you tell us the negotiations that you had with representatives of Hennis relating to the reduction of purchase price? A Well, several counsel and myself have had, I'd say, several months of negotiations back and forth in regard to the purchase price since the Interstate Commerce Commission restricted the rights. Of course the Trustee was trying to get as much as possible for the creditors, and we tried, as I think it was my duty to try,

[Tr. 84]

to try to get as much as possible. Although knowing in my own mind that just the fair thing would have to be that all the time that Hennis would have had to be given consideration on the original purchase price, because of the striking out of restricting of the rights in the Detroit area.

14 Q Now, do you consider the final outcome as presented here today—and you've familiarized yourself with Trustee's Exhibit 1 which has been entered into evidence—do you believe that that purchase price is a fair one under the terms and conditions as they exist? A I believe it is fair. There's never been any time when these rights were not—had no ceased operation on them and Hancock was doing six million a month in previous times, we were—the highest offer ever made for those rights was $650,000. And that was not put in writing by anybody, but it was discussed, $650,000 when I was operating Hancock and was doing six million a month.

15 Q You don't mean six million a month, do you? A I mean six million a year, pardon me.

16 Q You have submitted a plan of reorganization based upon the amended agreement or modified agreement for the purchase by Hennis of the operating authority. In your opinion is that plan fair, equitable and feasible? A I think it's fair and it's equitable and it's feasible. I think it's feasible because it takes care of these general creditors who are small, and will have to be paid in small amounts so that that can be gotten out of the way. I think it's fair because it does secure those who wait for payment, the Government and other taxing units, and they'll be secured by a mortgage on the operating rights. Which I think is very good security.

MR. BECK: No further questions.

MR. WELCH: I have no further questions, Your Honor.

[Tr. 85]

THE COURT: Mr. Boyle?

MR. BOYLE: If I may ask one question, Your Honor:

CROSS EXAMINATION

QUESTIONS BY MR. BOYLE:

17 Q Mr. Key, are you familiar with this Exhibit, Trustee's Exhibit No. 1? A Do I agree with that?

[Tr. 86]

18 Q No, are you familiar with that? A Oh, yes.

19 Q Could you give me a rough recount of the estimated administrative expenses? A Well, I don't know all the—maybe all the attorneys involved in this proceedings over the year who may come in with claims. But that takes in consideration the counsel for the Trustee's fees, the Trustees, the accountants, the special attorneys for the Trustee, and all other administration expenses that the Trustee would have in that regard.

THE COURT: I don't believe the question was answered. He wants a breakdown—

THE WITNESS: He wants a breakdown?

THE COURT: Isn't that what you asked?

20 Q If you could give me a breakdown, money-wise, Mr. Key, I'd appreciate that. A I don't have it with me. I mean I went over that when we estimated it, but I don't recall the breakdown right now.

21 Q Could you tell me what has been estimated for the Trustee? A I think at the time it was estimated something like $54,000.

[Tr. 87]

22 Q In addition to what you have received— A No, including what we received.

23 Q And how much for the Trustee's attorney? A How's that?

24 Q How much for the Trustee's attorney? A I said I don't have those figures with me, and I'd hate to testify to them, because I don't think—. Oh, I might, let's see—(examines documents) As I recall, the total amount estimated was in the neighborhood of $97,500.

25 Q And that includes what has been paid heretofore during the second— A That includes what's been paid before.

26 Q You say it did include what's been paid? A Includes, has to, because you've only got $90,000 which you're talking about paying out.

MR. BOYLE: I have no further questions.

THE COURT: This balance you estimate is approximately 10 per cent then of the total purchase price.

THE WITNESS: Approximately, yes.

[Tr. 88]

THE COURT: For all administrative expenses.

THE WITNESS: Yes, I don't know what they all are right now, I don't have—

THE COURT: The referee's salary and expense fund—

THE WITNESS: Yes, we will have some for that, Judge. The referee.

THE COURT: It will be relatively insignificant compared to the other costs.

All right. Well, that remains to be ruled on by the Court.

MR. BOYLE: I have no further questions.

THE COURT: Any further questions? Mr. Claycombe?

MR. CLAYCOMBE: No, sir.

MR. FLYNN: No questions.

THE COURT: Do you have any further questions, Mr. Beck?

MR. BECK: No, I have no further questions.

THE COURT: All right.

(Witness excused)

[Tr. 89]

THE COURT: I have one question: Has the accounting firm been paid as a part of the operating expense?

MR. BECK: No, sir. No, they have fees coming to them. They were paid the last time—that's included in that $90,000, Your Honor. There are accountants' fees, referee's salary and expense fund, counsel, special counsel; there are some, in addition to the counsel here, there are some counsel who should have fees with respect to some—they'll be minor fees, but there will be some with respect to proceedings in the Northern District. I don't believe they've been paid in full. And I'm not sure about the Pittsburgh lawyers, I think they may have received their payment in full. And as well as the Louisville attorneys, I thought had another minor bill coming to them. I don't know about the attorneys for the debtor. They have never shown up, so I would doubt very much that they're going to appear for fees, although they might at the time of the presentation.

* * * *

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

[Caption Omitted]

ORDER APPROVING MODIFICATION AGREEMENT OF SALE OF OPERATING RIGHTS AND APPROVAL OF AMENDED PLAN OF REORGANIZATION

At Indianapolis, in said district, on the 21st day of September, 1967.

A hearing having been held on the 7th day of August, 1967, pursuant to the order of this court dated July 3, 1967, on the petition of the trustee to approve modifica-

tion agreement of sale of operating rights and on the amended plan for the reorganization of Hancock Trucking, Inc., the above-named debtor, prepared and filed herein by Sheldon A. Key, trustee of said debtor, and for the consideration of any objections which might be made, or of such amendments or plans as might be proposed by said debtor or by any creditor or stockholder herein, and notice of said hearing having been given as required by Sec. 171 of the Bankruptcy Act and in accordance with the said order of July 3, 1967; and Ohio Fast Freight, Inc., a creditor of said debtor, having filed objections to the approval of said plan; and the said hearing having been adjourned until August 21, 1967, and thereafter continued by order of the court until September 7, 1967, and a further hearing having been held thereon on September 7, 1967; and at said hearing Sheldon A. Key, trustee in proceedings for reorganization herein, having appeared in person and by Sigmund J. Beck of Bamberger & Feibleman, his counsel, and Ferdinand Born, special counsel for the trustee; and Ohio Fast Freight, Inc. having appeared by Robert Claycombe of Claycombe & Claycombe, its attorneys; the District Director of Internal Revenue and the United States Attorney having appeared by Bernard J. Boyle, Assistant Regional Counsel; and the State of Ohio having appeared by William F. Welch of McHale, Cook & Welch, its attorneys; and Hennis Freight Lines, Inc. appearing by A. W. Flynn of York, Boyd & Flynn, its attorneys; and the court having considered the evidence given in these proceedings.

Now upon the trustee's petition aforesaid, and upon the amended plan for the reorganization of Hancock Trucking, Inc., said debtor, prepared and filed by Sheldon A. Key, trustee of said debtor, and all the proceedings had before me at the said hearings, and the court being of the opinion that said plan, as amended, complies with the provisions of Sec. 216 of the said Act, and is fair and equitable, and feasible, and the court finding that the debtor is insolvent; it is

ORDERED: That the modification agreement entered into between Hennis Freight Lines, Inc. and Sheldon A.

Key, as trustee for Hancock Trucking, Inc., for the reduction of the purchase price relating to the sale of the interstate operating authority is approved; and it is further

ORDERED: That the said amended plan for the reorganization of Hancock Trucking, Inc., the above named debtor, prepared and filed by Sheldon A. Key, trustee of said debtor, be, and it hereby is approved; and it is further

ORDERED: That for purposes of determination of the acceptance of said plan, creditors in Classes 7, 8 and 9 having been determined to be all holders of general unsecured claims and to be treated on a parity, shall be consolidated into one class in determining whether said class of creditors have accepted the plan; and it is further

ORDERED: That Hancock Trucking, Inc., said debtor, is insolvent, and that stockholders accordingly are not affected by the plan of reorganization; and it is further

ORDERED: That October 31, 1967, be, and it hereby is, fixed as the last day of a time within which creditors herein affected by the said plan may accept the same in writing filed with Sheldon A. Key, trustee herein, 508 Union Federal Building, 45 North Pennsylvania Street, Indianapolis, Indiana, and such filing with such trustee shall be deemed filing in this court; and it is further

ORDERED: That the summary of the said plan annexed hereto, marked Exhibit "A" and made a part hereof, be, and it hereby is, approved as the summary required by Sec. 175 (1) of the said Act; and it is further

ORDERED: That within twenty (20) days after the entry of this order, Sheldon A. Key, said trustee, shall transmit by mail to each creditor of the said debtor who is affected by the said plan, and who has filed his claim in these proceedings, or whose claim has been scheduled by the trustee, at his address appearing upon his claim filed, or upon the debtor's books, a copy of the said plan together with a copy of the summary thereof herein ap-

proved, a copy of the notice hereto annexed, marked Exhibit "B" and made a part hereof, and appropriate forms for acceptance; and it is further

ORDERED: That the 17th day of November, 1967, at 9:30 O'Clock, A.M., at Room 201, United States Court House, Federal Building, Indianapolis, Indiana, is fixed as the time and place for hearing upon confirmation of said amended plan of reorganization and objections to confirmation of said plan, if any, and for the hearing under Sec. 236 (2) of the said Act, if confirmation of the said plan is refused.

WILLIAM E. STECKLER
United States District Judge

[Distribution omitted]

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

[Caption Omitted]

EXHIBIT "A"

SUMMARY OF TRUSTEE'S AMENDED PLAN OF REORGANIZATION

The amended plan for the reorganization of Hancock Trucking, Inc., debtor in the above proceedings, provides in summary as follows:

1. The United States of America, the Gross Income Tax Division of the State of Indiana, the County of Vanderburgh of the State of Indiana, and the Department of Taxation for Highway Use Taxes of the State of Ohio shall receive in full satisfaction of their claims

ten per cent (10%) in cash within six (6) months from the date of confirmation, and the balance of indebtedness in full, exclusive of interest, in seventy-eight (78) equal monthly installments.

2. Holders of claims for wages earned within three (3) months prior to March 5, 1962, shall be paid in cash within six (6) months from the date of confirmation.

3. All other taxing authorities shall be paid in cash in full within six (6) months of confirmation.

4. The holders of all general unsecured claims, including but not limited to, holders of cargo loss and damage claims, freight and overcharge claims, personal injury claims, goods sold and delivered, services rendered, and others that have been allowed as general unsecured claims in these proceedings shall receive twenty per cent (20%) of their claims in cash within six (6) months from the date of confirmation.

5. The court has found that the debtor is insolvent so that no provision is made for stockholders.

6. All executory contracts, including leases of real estate, are rejected.

7. All costs and expenses of administration and other allowances shall be paid prior to the payment of claims to creditors.

8. The trustee, pursuant to due authority and approval of the court, has sold the interstate operating authority to Hennis Freight Lines, Inc. for a sum sufficient to pay all of the claims in the manner as hereinabove set forth, the said sum not to exceed Nine Hundred and Thirty-Five Thousand Dollars ($935,000.00), the final consummation of said sale to await confirmation of the plan of reorganization. The purchase price is to be paid in the following manner: Three Hundred Thousand Dollars ($300,000.00) within ninety (90) days following the final approval of sale, and the balance of the purchase price in seventy-eight (78) equal monthly installments. The balance is secured by a note and chattel mortgage on the operating rights to be transferred. This mortgage will secure the balance of payments to the taxing authorities. For the information of interested

creditors, a statement of assets and liabilities of this estate as of July 31, 1967, is attached.

9. This summary has been approved by the court.

DATED this ..... day of September, 1967.

SHELDON A. KEY
Trustee

BAMBERGER & FEIBLEMAN
Attorneys for Trustee
500 Union Federal Building
Indianapolis, Indiana

HANCOCK TRUCKING, INCORPORATED

STATEMENT OF ASSETS AND LIABILITIES

July 31, 1967

ASSETS

Cash	$ 9,102.25	
Funds, Deposits, Account Receivables, less provisions for losses	25,279.54	
U.S. Treasury Bills	49,433.57	
Prepayments	138.56	
Office furniture and equipment	1,787.39	
Assigned value of operating rights	765,000.00	
		$ 850,741.31

LIABILITIES

Trustee's current liabilities	$ 48.82	
Class 2—United States	378,638.34	
Class 3—State of Indiana Gross Income Tax	31,218.91	
Class 4—State of Indiana, Vanderburgh County	76,650.55	
Class 5—State of Ohio—Use Tax	185,000.00	
Classes 7, 8, 9—General Unsecured Creditors	889,432.88	
Class 1—Wage claims	13,466.97	
Class 6—Other Tax claims	21,008.23	
		$1,595,464.70

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

[Caption Omitted]

EXHIBIT "B"

NOTICE

TO ALL CREDITORS OF
HANCOCK TRUCKING, INCORPORATED:

NOTICE IS HEREBY GIVEN THAT:

1. On the 21st day of September, 1967, the court approved an amended plan for the reorganization of Hancock Trucking, Inc., the above-named debtor, prepared and filed by Sheldon A. Key, trustee of said debtor.

2. In accordance with said order, there is transmitted herewith

(a) a copy of said plan;
(b) a copy of the summary of said plan approved by the Judge;
(c) appropriate form for the acceptance of said plan.

3. By the terms of said plan, all general unsecured creditors whose claims arose for services rendered, goods delivered, cargo loss and damage, freight or overcharge have been classified as Classes 7, 8 and 9. The order approving said plan has consolidated the classes for the purpose of acceptance as general unsecured claimants.

4. Acceptances may be filed in writing in the form enclosed herein by all unsecured creditors affected by the plan on or before October 31, 1967, with Sheldon A. Key, Trustee, Room 508, Union Federal Building, 45 North Pennsylvania Street, Indianapolis, Indiana 46204. Acceptances will be effective only as to creditors who have filed appropriate proofs of claim which have been allowed.

5. Objections to the confirmation of the plan, if any, shall be made in writing and filed with the Clerk of this court at the Federal Building, Indianapolis, Indiana, on or before October 31, 1967.

6. Hearing upon the confirmation of the amended plan of reorganization and objections thereto, if any, will be held at the United States Court House, Federal Building, Indianapolis, Indiana, at _____ o'clock, ___ P. on the _____ day of November, 1967, in the event such plan shall have been duly accepted by creditors affected thereby.

7. If confirmation of said plan is refused, a hearing pursuant to Sec. 236 (2) of the Bankruptcy Act will be held at the aforesaid time and place, and after such hearing or any adjournment thereof, an order will be entered either adjudging said debtor a bankrupt and directing that bankruptcy be proceeded with under the terms of the Bankruptcy Act, or dismissing these proceedings, as in the opinion of the Judge, may be in the best interests of the creditors and stockholders of the debtor.

8. Any dates herein provided may be extended by the court and any hearings may be adjourned from time to time without notice to the debtor, creditors, stockholders or other parties in interest, other than announcement of the adjourned date or dates at the time and place of said hearings.

By order of the court dated the _____ day of September, 1967.

SHELDON A. KEY
Trustee

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

[Caption Omitted]

ACCEPTANCE OF AMENDED PLAN OF REORGANIZATION

The undersigned creditor of Hancock Trucking, Inc., the above-named debtor, whose claim is in the amount hereinafter set forth, which claim has been filed and allowed herein, hereby accepts the amended plan for the reorganization of Hancock Trucking, Inc., debtor, approved by this court as set forth in its order entered on September ....., 1967.

Amount of Claim: $.....

Classification of Claim (check appropriate box):

☐ Class 7—Holders of claims for damages arising out of personal injuries.

☐ Class 8—Holders of claims arising out of cargo loss and damage, freight and overcharge, exclusive of claims previously allowed in the plan of reorganization confirmed on January 31, 1957.

☐ Class 9—Holders of general claims, including goods sold and delivered, services rendered, independent contractor freight and steel haulers, interline accounts, trailer interchange, wage claims other than those included in Class (1) herein, inclusive of claims not fully discharged under the reorganization plan confirmed January 31, 1957, and not otherwise classified.

DATED: ....., 1967.

By.....

.....

(Title)

.....

(Address)

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

[Caption Omitted]

NOTICE TO SECRETARY OF TREASURY
TO ACCEPT OR REJECT PLAN

Notice is hereby given that with respect to the claim of the United States for Internal Revenue withholding and highway use tax in the amount of Three Hundred Seventy-six Thousand, Seven Hundred Sixty-eight Dollars and Sixty-one Cents ($376,768.61), and the General Accounting Office claim for overcharge on transportation in the amount of Nine Hundred Eighty-nine Dollars and Fifty-five Cents ($989.55) against the above-named debtor, you are required, not more than ninety (90) days after receipt of this notice, to file in this Court your acceptance or rejection of the Amended Plan for the Reorganization of said debtor approved by this Court on the 21st day of September, 1967, under Section 174 of the Act of Congress relating to Bankruptcy, a certified copy of which Amended Plan accompanies this notice; and upon your failure so to do, your consent to the said Plan shall be conclusively presumed.

Dated this 28th day of September, 1967.

WILLIAM E. STECKLER
Judge
United States District Court
Southern District of Indiana

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

Filed Nov 20 1967, 2:29 P.M. 1967, U. S. District Court, Indianapolis Division, Southern District of Indiana, Robert G. Newbold, Clerk.

[Caption Omitted]

NOTICE OF REJECTION OF AMENDED PLAN OF REORGANIZATION OF HANCOCK-TRUCKING INCORPORATED

SUBMITTED BY THE TRUSTEE

Having considered the interest and claims of the United States of America as filed and presented herein for taxes outstanding against the debtor, Hancock-Trucking, Incorporated, and the effect thereon of the amended plan of reorganization approved by this Court in its order of September 21, 1967, I, Fred B. Smith, General Counsel for the Department of Treasury, in pursuance of the provisions and authority delegated to me by the Secretary of the Treasury by Treasury Department Order No. 190, (Revision 2) dated October 23, 1963, and by virtue of Section 199, Chapter X of the Bankruptcy Act (11 U.S.C. 599) do hereby reject such amended Plan of Reorganization with respect to the interest and claims of the United States of America for taxes.

FRED B. SMITH
General Counsel for the
Department of Treasury

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

[Caption Omitted]

TRANSCRIPT OF PROCEEDINGS OF DECEMBER 8, 1967

* * * *

[Tr. 3]

THE CLERK: Number 1569 Bankruptcy; In the Matter of Hancock Trucking, Inc., Debtor.

THE COURT: The Court recalls that this matter was assigned for today as a continued hearing on the order—on the confirmation of the Plan, and of course the Treasury Department notified the Court that it was opposing the plan by reason of the fact that the Plan was not acceptable, inasmuch as the Federal Government was not being paid its tax claim in full prior to payment of certain other classes of creditors.

I believe that is the status of the matter today.

MR. BECK: Yes, your Honor.

THE COURT: Now I'd like to hear from counsel for the Trustee.

MR. BECK: If the Court please, we would like to move to—make two motions.

One: that the testimony taken at the hearing on the approval of the Plan, and the exhibits, be included for this purpose, for this hearing, in view of the shortness of the difference—or rather, the brief lapse of time.

We also wish to state to the Court that the acceptances of creditors in Class 7, 8, and 9 have been received in a total amount of $873,356.71—I beg your pardon, that is in error. The $873,356.71 are the total amount of claims filed and allowed and pending in these proceedings in Class 7, 8, and 9, other than the claims of Wilmark Insurance Agency, National Leasing Corporation, Insurance Corporation of America, which claims were subordinated to the claims of general creditors in these proceedings.

[Tr. 54]

The total number of acceptances amount to $702,-509.42, being in excess of the two-thirds required.

THE COURT: That was $702,000—

MR. BECK: $702,509.42.

And the total amount of the claims allowed and pending, of filed claims, $873,356.71, exclusive of the subordinated claims referred to.

THE COURT: All right.

MR. BECK: I should like to move that on the evidence before the Court, the fact that the acceptances of the only class of creditors which the Trustee submits are affected by the Plan, be confirmed.

The legal memorandum which counsel for the Trustee has supplied to the Court at the time of hearing on the approval of the Plan, we will abide by.

It is our view that the United States has been, under the terms of this Plan, afforded equal security to the amount of its debt at the present time, and we think that it is fair and equitable.

[Tr. 5]

We have no further evidence to present to the Court, other than to make the statement that there has been no deteriorating position in the estate of the Debtor or the affairs of the Trustee since the last hearing.

THE COURT: Very well. I'd like to hear from the Government. Mr. Boyle?

MR. BOYLE: All I can say, your Honor, is that the Secretary of the Treasury has notified the Court of the rejection of the Plan, and there is not much more I can say, other than what the Court has said before.

THE COURT: Well, I have tried to view this matter from a practical point of view, and in view of the whole of the evidence before the Court and the Court's acquaintance with the entire background of this Debtor, I am of the firm feeling that the Government does not stand to lose as a result of the Plan as presently proposed. That is, if the Government were required to take the tax indebtedness due the Government according to the Plan

called for, I cannot believe at this date, nor do I believe that the Court could say that there is a reasonable likelihood in the foreseeable future, or even during the course of the Plan, that the Government's position would be impaired in getting the whole of its claim paid that is allowed under the Plan.

[Tr. 6]

The only thing that I can see that would create any question of law is whether or not the Government's position is being impaired by not being allowed interest on the claim, the balance due. Now, if that should justify appellate proceedings, appeal process, of course this matter could be help [sic] up for some time, but the most that I can see that the Government could gain in that respect would be, first, the use of the whole of the claim, and secondly, perhaps if not, that it be allowed interest on the balance due.

Now, if the Court has expressed any idea here that is not supported either by law—and primarily that is what I have in mind—or by the record as I have seen it and understand it, I'd like to have that pointed out by either of the interested—or any of the interested parties.

MR. BOYLE: Well, the only thing I can add to it, your Honor, is what was set forth in that memorandum.

THE COURT: Yes, I've read that.

[Tr. 7]

MR. BOYLE: I believe the Court is ignoring the priorities, but with the utmost respect to the Court I can understand where you would feel that way in respect to to the general creditors.

My recommendation is known to the Court. Now, whether this ruling would be appealed or not, why, I am not in position to be able to say yet on that.

THE COURT: Very well.

Now, is there anything—Mr. Boyle, do you have any comments in regard to making the record on this proceedings? Are you amenable to the proposal that the Trustee and his counsel make in regard to incorporating the transcript of the evidence, or the record of the prior hearing?

MR. BOYLE: I was over at the last—
THE COURT: In this hearing would you agree to that?
MR. BOYLE: Oh, sure.
THE COURT: Now, was there any other proposal?
MR. BECK: No, sir, your Honor.
THE COURT: Only that there has been no deterioration?
MR. BECK: That's correct; and there's been no change of any consequence in the status of the Trustee's or the Debtor's accounts. In other words, the Reports of Operation have been filed; they show no change since the evidence that was put on at the last hearing.

[Tr. 8]

THE COURT: Would you have anything to the contrary that you would want to put before the Court, Mr. Boyle?
MR. BOYLE: At the present time, and to my knowledge, your Honor, nothing that I can present.
THE COURT: In other words, I could ask you whether you wish to stipulate that, but I don't ask you to concede any position that you might have, unless you know of your own knowledge—
MR. BOYLE: If I understand your Honor, you're asking me if I could agree to incorporate the testimony and what went on at the last hearing in this hearing today.
THE COURT: Yes, and also that there's been no change in the status of the Trustee's operations from the standpoint of a deterioration of the Trustee's position with regard to these accounts.
MR. BOYLE: If the Trustee has expressed the statement that there has been no deterioration, I am in no position to say to the contrary.

[Tr. 9]

THE COURT: All right.
Further, in regard to Mr. Beck's report, that of the total of the claims under Class 7, 8, and 9, excluding the subordinated claims, that acceptances in the amount of

$702,509.42, which are in excess of two-thirds of the amount of those claims, would you have anything to show to the Court to the contrary?

MR. BOYLE: I have nothing to show to the Court to the contrary. I'm sure Mr. Beck's figures can be supported.

THE COURT: Well, is there anything further to be offered or stated?

MR. BECK: No, your Honor.

THE COURT: By anyone?

MR. BECK: I would make this comment only, and that is if the Court should choose not to confirm the Plan, then I would recommend not that an adjudication be entered but that 60 days at least be given to determine what should occur, and whether an amended Plan or an adjudication should be entered; but on the assumption that the Court would confirm, I have nothing else to add.

THE COURT: Not having given that any consideration in depth as to what would happen if the Court did not confirm the Plan, aside from the various potentials that could be encountered if that were to occur—I say aside from those considerations—the Court has concluded that in view of the acceptances of the Plan in excess of the two-thirds amount of Classes 7, 8, and 9, that the Court would confirm the Plan, meaning that from this point on the next stage would be either an appeal or no appeal by the Government.

[Tr. 10]

MR. BECK: We will prepare the entry, your Honor, so that it may be in proper form.

THE COURT: Very well.

Is there anything further to be said?

MR. BECK: Would the appearances—

THE COURT: I don't want—Mr. Boyle, I don't want the impression to be gained that this is to be the rule as far as this particular Court is concerned. There may be many, many cases in the future where I would not pursue this course. This case has been pending a long time, and many, many of the smaller creditors have waited a very, very long time, and I have been trying to weigh

the equities, and this is an equitable proceedings even though it's governed by statute. I have been trying to weigh the equities between following the course that the Government would have the Court follow and following the course that the Court has chosen to follow, and I still believe that the factors weigh so heavily in favor of the Court confirming the Plan to get this thing closed, that the Court would not be doing what it thinks it should be if I were to go the other route.

[Tr. 11]

What I am trying to say is that if we would have had an ordinary reorganization proceedings here that had been pending, say, two or three or even four years, I might have a different attitude. I believe this case goes back to 1954, in two sections; isn't that correct?

MR. BECK: That's correct, sir.

THE COURT: So I think it's time to get the litigation pretty well finished up.

Now, the appeal may delay that; I may be wrong. If I am wrong, we'll go the other—

MR. BOYLE: Your Honor, if I may say one thing: I am sympathetic to the creditors, but I do, with due respect to the Court, think the Court is setting a precedent which can be used in any other Court in the United States, in any type of reorganization.

THE COURT: Well, I think it will turn on whether or not the Government's position is impaired by this order. And if it is appealed, perhaps no-one will have a keener interest in the outcome of the appeal than I.

[Tr. 12]

MR. BOYLE: Nor me, either, and Mr. Beck.

THE COURT: But I wanted to make it known right now that I'm not indicating by this ruling that this will be the rule as far as the Court is concerned.

MR. BOYLE: Oh, I appreciate the views of the Court. All I'm trying to do is to tell the Court what I think the law is and what the Court should do.

Now, if the Court wishes to follow my suggestion, fine; if he doesn't, why, there is no harm done whatsoever.

THE COURT: You've done your duty, I'll say that. And I've appreciated the attitude of the Government throughout the long proceedings that's been pending here before the Court.

I would say the Government has been cooperative in that regard.

MR. BOYLE: Your Honor, the Government as well as creditors has a lot of obligations to meet, and I'm sure that they would like to have this money as soon as any of these creditors, which I realize are possibly wage-earners, and other people, but I have my duty to do what I've done, and I've done it.

[Tr. 13]

THE COURT: Well, the Court will enter an order confirming the Plan.

* * * *

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

[Caption Omitted]

ORDER CONFIRMING PLAN

At Indianapolis, in said District, on the 19th day of December, 1967.

This cause having come on to be heard on the 8th day of December, 1967, pursuant to the orders of this court of November 22, 1967, and September 21, 1967, for the consideration of the confirmation of the amended plan of reorganizaiton of Hancock-Trucking, Incorporated, the above-named debtor, approved by this court on September 21, 1967, under Section 174 of the Bankruptcy Act, and of such objections as might be made to the confirmation

thereof, and due deliberation having been had thereon, the

COURT DOES FIND:

1. That notice of the said hearing has been duly given as required by Section 179 of the said Act, and the said order of this court of September 21, 1967.

2. That for the purposes of the said plan and its acceptance, this court on July 3, 1967, entered an order fixing the division of creditors and stockholders of the said debtor into eleven (11) classes, according to the nature of their respective claims and stock; namely

(1) Holders of claims for wages earned within the three months prior to the filing of the petition commencing these proceedings i.e. March 5, 1962, not in excess of six hundred dollars ($600.00) per person.

(2) The United States with respect to all claims against the debtors inclusive of but not limited to taxes.

(3) The State of Indiana, Gross Income Tax Division, for taxes arising under the Gross Income Tax Law.

(4) The State of Indiana, County of Vanderbaugh, for personal property taxes.

(5) The State of Ohio, Department of Taxation, for Highway Use Taxes.

(6) The State of Indiana, State of Illinois, State of Ohio, State of Pennsylvania and any other state or political subdivision thereof with respect to claims for all taxes inclusive of real estate taxes, other than those taxes set forth in paragraphs 3, 4, and 5 herein.

(7) Holders of claims for damages arising out of personal injuries.

(8) Holders of claims arising out of cargo loss and damage, freight and overcharge, exclusive of claims previously allowed in the plan of reorganization confirmed on January 31, 1957.

(9) Holders of general claims, including goods sold and delivered, services rendered, independent contractor freight and steel haulers, interline accounts, trailer interchange, wage claims other than those included in class (1) herein, inclusive of claims not fully discharged under the reorganization plan confirmed January 31, 1957, and not otherwise classified.

(10) Holders of shares of preferred stock now outstanding.

(11) Holders of shares of common stock now outstanding.

3. That the plan provides that all costs and expenses of administration and other allowances which may be made by the Judge in this proceeding shall be paid in cash by Sheldon A. Key, Trustee of said debtor, out of the assets in his hands.

4. That the plan provides that all claims included in classes (1) and (6) are to be paid in cash in full.

5. That class (2) consists of one creditor, the United States of America, whose claim has been filed and allowed in the sum of Three Hundred Seventy-Seven Thousand Six Hundred Forty-Eight Dollars and Seventy-Nine Cents ($377,648.79); the said plan of reorganization has been rejected by said claimant by the filing of a written notice of the General Counsel for the Department of Treasury of the United States.

6. That class (3) consists of one creditor, the State of Indiana, Gross Income Tax Division, which has filed two claims for taxes in the aggregate amount of Thirty-One Thousand Two Hundred Eighteen Dollars and Ninety-One Cents ($31,218.91); and that the plan of reorganization has not been accepted by said creditor.

7. That class (4) consists solely of one creditor, the Treasurer of Vanderburgh County, State of Indiana, for taxes in the sum of Seventy-Six Thousand Six Hundred Fifty Dollars and Fifty-Five Cents ($76,650.55); and that the plan of reorganization has not been accepted by said claimant.

8. That class (5) consists solely of the State of Ohio, Department of Taxation for Highway Use Taxes, with a claim against the debtor for taxes in the sum of One Hundred Eighty-Five Thousand Dollars ($185,000.00), allowed herein; and that the plan has not been accepted by said claimant.

9. That pursuant to the order approving the amended plan of reorganization, creditors in classes (7), (8) and (9) have been determined to be holders of general unsecured claims and consolidated into one class for the purpose of determining whether said class of creditors has accepted the plan; that on January 14, 1966, the court entered an order allowing the claims of National Leasing Company, Inc. in the amount of Seven Hundred Seventy-Eight Thousand Three Hundred Forty-Five Dollars and Sixty-Four Cents ($778,345.64) and the claim of Wilmark Insurance Agency, Inc. in the amount of One Hundred Six Thousand Eight Hundred Ninety-Nine Dollars and Eighty-One Cents ($106,899.81), but subordinating said claims to all other creditors in the proceeding; that the aggregate of filed and allowed claims of classes (7), (8) and (9), exclusive of the subordinated claims of Wilmark Insurance Agency, Inc. and National Leasing Company, Inc., is Eight Hundred Eighty-Three Thousand Three Hundred Fifty-Six Dollars and Seventy-One Cents ($883,356.71); and that the plan has been duly accepted in writing, filed in court, by or on behalf of creditors of the said debtor owning and holding Seven Hundred Five Thousand Nine Hundred Seventy-Five Dollars and Seventy-Three Cents ($705,975.73) of claims of classes (7), (8) and (9), whose claims have been filed and allowed, and which claims are at least two-thirds (⅔) in amount of the said filed and allowed claims of classes (7), (8) and (9), exclusive of the aforesaid subordinated claims.

10. That on June 26, 1962, an order was entered herein fixing September 30, 1962, as the time within which the proofs of claim of creditors and of the interests of stockholders might be filed and providing that such claims and interests shall be deemed to be allowed unless objections are filed; and the

COURT IS SATISFIED:

11. That the provisions of Article VII, Section 199, and Article X of Chapter of the said Act have been complied with.

12. That the said plan is fair and equitable, and feasible.

13. That adequate protection for the realization by the creditors in classes (2), (3), (4), and (5) is provided by the plan by securing the payment of their claims by an assignment of note and chattel mortgage on the operating rights to be transferred to Hennis Freight Lines, Inc., and that such method safeguards the interests of such creditors and equitably and fairly provides the protection for the payment of the claims of said creditors.

14. That the proposal of the said plan and its acceptance are in good faith and have not been made or procured by means of promise forbidden by the said Act; that all payments made or to be made by the said debtor or any other person for services and for costs and expenses in, or in connection with, this proceeding or in connection with the said plan and incident to the reorganization, have been or will be fixed by the Judge.

15. There are no persons who are to be directors or officers or voting trustees upon the consummation of the plan; and it is

ORDERED, ADJUDGED AND DECREED:

16. That the holders of claims included in classes (1) and (6) are not affected by the said plan, and that it is not requisite to the confirmation of such plan that it be accepted by the holders of such claims.

17. That the debtor is insolvent.

18. That the claims of National Leasing Company, Inc. and Wilmark Insurance Agency, Inc., as creditors in class (9), being subordinated to all other creditors, are of no value and that the acceptance of the said plan by the holders of said claims is not a prerequisite to the confirmation of such plan.

19. That the interests in class (10) and (11) are of no value and that the acceptance of the said plan by the

holders of the interests in class (10) and (11) is not a prerequisite to the confirmation of such plan.

20. That the amended plan for the reorganization of the said debtor approved by this court on September 21, 1967, under Section 174 of the said Act, and as modified herein, a copy of which plan is annexed hereto and marked Exhibit "A", be, and it hereby is, confirmed.

21. That on or before the 20th day of March, 1968, Sheldon A. Key, Trustee of said debtor, be, and he hereby is, authorized and directed to consummate the sale of the operating rights of the debtor to Hennis Freight Lines, Inc. in accordance with the terms of the sale heretofore approved by this court pursuant to orders entered on October 10, 1962, and September 21, 1967.

22. That objections to the allowance of all claim in classes (1) through (9) not heretofore adjudicated, may be filed by all interested parties on or before the 20th day of March, 1968, and the court reserves the right and jurisdiction to adjudicate said claims.

23. That this court reserves the full right and jurisdiction to pass upon the allowance of compensation for services rendered in accordance with Article XIII of the Bankruptcy Act.

24. That this court reserves the full right and jurisdiction to make at any time and from time to time such orders in aid of the consummation of the said plan as the court shall deem proper.

/s/ Wm. E. Steckler
United States District Judge

[Distribution omitted]

* * * *

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

[Caption Omitted]

AMENDED PLAN OF REORGANIZATION

Amended plan of reorganization for Hancock-Trucking, Incorporated, the above named debtor.

CLASSES OF CREDITORS AND STOCKHOLDERS OF THE DEBTOR

1. Holders of claims for wages earned within the three months prior to the filing of the petition commencing these proceedings i.e. March 5, 1962, not in excess of six hundred dollars ($600.00) per person.
2. The United States with respect to all claims against the debtor inclusive of but not limited to taxes.
3. The State of Indiana, Gross Income Tax Division for taxes arising under the Gross Income Tax Law.
4. The State of Indiana, County of Vanderburgh for personal property taxes.
5. The State of Ohio, Department of Taxation for Highway Use Taxes.
6. The State of Indiana, State of Illinois, State of Ohio, State of Pennsylvania and any other state or political subdivision thereof with respect to claims for all taxes inclusive of real estate taxes, other than those taxes set forth in paragraphs 3, 4, and 5 herein.
7. Holders of claims for damages arising out of personal injuries.
8. Holders of claims arising out of cargo loss and damage, freight and overcharge, exclusive of claims previously allowed in the plan or reorganization confirmed on January 31, 1957.
9. Holders of general claims, including goods sold and delivered, services rendered, independent contractor freight and steel haulers, interline accounts, trailer interchange, wage claims other than those included in class (1) herein, inclusive of claims not fully discharged under

the reorganization plan confirmed January 31, 1957 and not otherwise classified.

10. Holders of shares of preferred stock now outstanding.

11. Holders of shares of common stock now outstanding.

ARTICLE I

PROVISIONS ALTERING OR MODIFYING RIGHTS OF CREDITORS AND STOCKHOLDERS

A. Creditors in Classes 2, 3, 4, and 5.

Holders of the following claims i.e. The United States with respect to all claims against the debtor inclusive of but not limited to taxes, the State of Indiana, Gross Income Tax Division for taxes arising under the Gross Income Tax laws, The State of Indiana, County of Vanderburgh for personal property taxes and the State of Ohio, Department of Taxation for Highway Use Taxes shall be satisfied by the payment to said creditors of ten percent (10%) of the amount of said claims, in cash, within six months from the date of confirmation of this plan of reorganization, and by the payment of the balance of said indebtedness in full, exclusive of interest, in seventy-eight equal monthly instalments, the first said instalment to be paid within six months after confirmation of the plan. Said instalment payments shall be secured by the assignment of note and chattel mortgage as hereinafter more explicitly set forth in the Means of Execution of this plan; and the rights of the creditors in the afore-mentioned classes shall be modified and altered accordingly.

B. Creditors in Classes 7, 8 and 9

Holders of claims for damages arising out of personal injuries, holders of claims arising out of cargo loss and damage, freight and over-charge, exclusive of claims previously allowed in the plan of reorganization confirmed on January 31, 1957, and holders of general claims, in-

cluding goods sold and delivered, services rendered, independent contractors, freight and steel haulers, interline accounts, trailer interchange, wage claims other than included in Class I herein, inclusive of claims not fully discharged under the reorganization plan confirmed January 31, 1957 and not otherwise classified shall be satisfied by the payment to said creditors of twenty per cent (20%) of the amount of said claims, in cash, within six months (6) of confirmation of the plan of reorganization; and the rights of the creditors in the aforementioned classes shall be modified and altered accordingly.

ARTICLE II

PROPERTY TO BE DEALT WITH BY THE PLAN

All property of the debtor will be dealt with by the plan.

ARTICLE III

PROVISIONS FOR THE PAYMENT OF ADMINISTRATION EXPENSES AND OTHER ALLOWANCES

All costs and expenses of administration and other allowances which may be made by the Judge in this proceeding shall be paid in cash by the trustee, out of the assets in his hands, prior to the payment of the claims of any creditors or stockholders of any class.

ARTICLE IV

PROVISIONS FOR THE REJECTION OF EXECUTORY CONTRACTS

All executory contracts, including unexpired leases of real property, to which the debtor is a party, are hereby rejected.

ARTICLE V

CLAIMS TO BE PAID IN CASH IN FULL

All claims included in Classes 1 and 6 are to be paid in cash in full.

ARTICLE VI

CREDITORS AND STOCKHOLDERS NOT AFFECTED BY THE PLAN AND PROVISIONS WITH RESPECT TO THEM

The following creditors and stockholders are not to be affected by the plan:

1. The holders of all claims to be paid as provided in Article V hereof.
2. The stockholders in classes 10 and 11 for the reason that, because the debtor is insolvent, their stock is valueless.

ARTICLE VII

PROVISIONS FOR CLASSES OF CREDITORS WHICH ARE AFFECTED BY AND DO NOT ACCEPT THE PLAN BY THE REQUISITE MAJORITY

In respect of any class of creditors which is affected by and does not accept the plan by the two-thirds (⅔) majority in amount required under Chapter X of the Bankruptcy Act, adequate protection for the realization by them of the value of their claims against the property dealt with by the plan, and affected by such claims, shall be provided in the order confirming the plan by any one or more of the methods prescribed by Section 216(7) of the said Act.

ARTICLE VIII

MEANS FOR EXECUTION OF THE PLAN

On August 6, 1962, the court entered an order approving an agreement, dated February 15, 1962 between the debtor and Hennis Freight Lines, Inc., a North Carolina corporation, whereby Hancock agreed to sell and Hennis Freight Lines, Inc. agreed to buy all of the operating rights of the debtor; said agreement for sale was approved with certain modifications by the Interstate Commerce Commission; there has been filed simultaneously with the submission of this plan by the trustee a proposed

modification of said agreement of sale whereby the purchase price has been modified to provide for the payment by Hennis to the trustee of a sum not to exceed Nine Hundred Thirty Five Thousand Dollars ($935,000.00) payable three hundred thousand ($300,000.00) within ninety (90) days of the approval of the sale by the Interstate Commerce Commission and the balance in equal monthly instalments over a period of seventy eight (78) months. The modification further provides that the trustee shall submit a plan of reorganization to the court providing for a settlement in satisfaction of the claims of unsecured creditors by payment of twenty per cent (20%) of the face amount of their claims and that any excess funds after payment of all other administration expenses and priority claims in full shall be used as a reduction on the balance of the purchase price. The hearing on the approval of the modification agreement shall be brought on for hearing at the same time as the hearing on the approval of the within plan of reorganization. Pending confirmation of this plan, all other assets of the debtor will be reduced to cash.

Upon confirmation of the plan, the trustee shall make the payments provided for in Articles I, III and V.

Under the terms of the proposed sale of operating rights to Hennis, the latter is to execute its note inclusive of principal and interest at the rate of six per cent (6%) per annum on the unpaid balance in the maximum sum of Six Hundred Thirty Five Thousand Dollars ($635,000.00), reduced by the amount in excess of the sum necessary to make all of the payments as provided for in the plan, and to secure said note by a chattel mortgage on the operating rights. The aforesaid note together with the chattel mortgage securing the same shall be assigned by the debtor to a designated banking institution approved by the Judge, as trustee who shall hold the same for the benefit of the creditors in classes 2, 3, 4 and 5 herein. The instalment note shall bear an acceleration clause. The payments under the note shall be pro-rated and paid directly to the creditors in classes 2, 3, 4, and 5 by Hennis. In the event of default of any one instalment

to any one of the aforesaid four creditors notification to the designated banking institution trustee shall be sufficient for the latter to take all steps to foreclose on the operating rights and to effect collection of the note for the benefit of said four creditors in classes 2, 3, 4 and 5.

The trustee herein, shall have general supervision over the plan and the consummation thereof, subject to the approval of the court, and the trustee shall be authorized to take such steps and proceedings as he may deem advisable and as may be approved by the court in order to effect the consummation of the plan.

This Article VIII describes in general outline the means for the execution of the plan, and the precise terms and conditions thereof are to be determined by the trustee in accordance with the powers granted by the plan and under the supervision of the court to fit the facts and circumstances as they may exist from time to time during the consummation of the plan.

The trustee, with the approval of the court, may insofar as it does not materially and adversely affect the interest of the creditors and stockholders of the debtor, supply any defect or reconcile any inconsistency in such manner or to such extent as may be necessary or expedient to effect the consummation of the plan.

ARTICLE IX

PROVISIONS WITH RESPECT TO THE SELECTION OF DIRECTORS AND OFFICERS

Since the plan does not contemplate the continuation of the corporate existence of the debtor after the consummation hereof, or the formation of a new corporation, the provisions, contemplated by Section 216 (11) of the Bankruptcy Act with respect to the manner of selection of the persons who are to be directors, officers, or voting trustees, if any, upon the consummation of the plan, and their respective successors, are inapplicable.

ARTICLE X

PROVISIONS RESPECTING SECURITIES AND REPORTS TO BE INCLUDED IN THE CHARTER OF THE DEBTOR

Since the plan does not contemplate the continuation of the corporate existence of the debtor after the consummation hereof, or the formation of a new corporation, the provisions contemplated by Section 216 (12) of the Bankruptcy Act with respect to the inclusion in the charter of the debtor, or any such new corporation, of certain provisions concerning securities and reports are inapplicable.

ARTICLE XI

PROVISIONS FOR THE RETENTION, ENFORCEMENT, SETTLEMENT, OR ADJUSTMENT OF CLAIMS BELONGING TO THE DEBTOR OR TO THE ESTATE

The settlement or adjustment of any claims belonging to the debtor or to the estate being administered in this proceeding, and arising prior to the consummation of the plan, shall be the responsibility of the trustee unless the court shall order otherwise. The trustee shall be impowered to retain, inforce, collect, settle and adjust, compromise and finally release and discharge any such claims.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

[Caption Omitted]

NOTICE OF APPEAL

Notice is hereby given that the United States of America, who has filed a claim for taxes in this proceeding, hereby appeals to the United States Court of Appeals for the Seventh Circuit from the order confirming plan entered in this action on December 19, 1967.

/s/ K. Edwin Applegate
United States Attorney

A copy of this notice has been mailed to

Sigmund J. Beck, Esq.
500 Union Federal Building
45 North Pennsylvania Street
Indianapolis, Indiana 46204

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

[Caption Omitted]

STIPULATION BETWEEN TRUSTEE IN REORGANIZATION AND THE UNITED STATES OF AMERICA REGARDING TRUSTEE'S PETITION TO OFFSET CLAIMS AGAINST THE UNITED STATES OF AMERICA

Be it stipulated by and between the trustee in Reorganization, Sheldon A. Key, and The United States of America as follows:

WHEREAS, The United States of America filed its claim, being docketed as trustee's claim No. P-1 for Internal Revenue charges in the sum of $377,648.79; and

WHEREAS, The United States of America through the United States General Accounting office filed its claim, being trustee's Docket No. P-197, in the amount of $989.55 for excess transportation charges paid to the debtor and due the United States General Accounting Office; and

WHEREAS, The United States of America through the United States General Accounting office has reduced its claim, being trustee's Docket No. P-197, to the sum of $426.64 by reason of payments received and credited to previous charges assessed against the debtor; and

WHEREAS, the trustee filed his petition on February 7, 1968 for authority to offset funds due the debtor from The United States of America for transportation of goods for the United States of America, still unpaid, in the sum of $2,765.95; and

WHEREAS, the trustee has submitted substantiating documents regarding the various funds due the bankrupt estate from The United States of America for the aforesaid transportation charges, and said documents substantiate the trustee's claim in the amount of $2,688.88;

THEREFORE, it is hereby stipulated by the undersigned counsel for the above cited parties that the trustee has a claim against The United States of America for transportation charges due it in the amount of $2,688.88, and that it is equitable that the said claim be set off against the claims filed by The United States of America in this bankruptcy proceeding, to-wit:

(a) That $426.64 of the trustee's claim in the amount of $2,688.88 be set off against the Government's amended claim No. P-197 as reduced to the amount of $426.64, satisfying said claim in full.

(b) That the remainder of the trustee's claim in the amount of $2,262.24 be set off against the claim of The United States Government for Internal Revenue charges,

being Trustee's Claim No. P-1, filed in the amount of $377,648.79, thereby reducing said claim of the United States Government to the sum of $375,386.55.

Dated this 23rd day of April, 1968.

SHELDON A. KEY, TRUSTEE IN REORGANIZATION FOR HANCOCK TRUCKING, INCORPORATED, DEBTOR

By EDWARD B. HOPPER II
One of His Counsel

THE UNITED STATES OF AMERICA
By EDWARD G. SYPNIEWSKI
One of Its Counsel

BAMBERGER & FEIBLEMAN
500 Union Federal Building
Indianapolis, Indiana

Attorneys for Trustee

EDWARD G. SYPNIEWSKI
Assistant United States District Attorney
Southern District of Indiana
Indianapolis, Indiana

[Distribution omitted]

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

September Term, 1968 September Session, 1969

No. 16857

In the Matter of

HANCOCK TRUCKING, INCORPORATED, Debtor,
UNITED STATES OF AMERICA, APPELLANT

v.

SHELDON A. KEY, TRUSTEE, APPELLEE

Appeal from the Order of the United States District Court for the Southern District of Indiana

February 27, 1969

Before FAIRCHILD and KERNER, *Circuit Judges*, and GORDON, *District Judge*.[1]

GORDON, *District Judge*. This appeal by the United States involves an unpaid federal tax claim in the stipulated amount of $375,386.55 and is taken from the order of the district court confirming an amended plan of reorganization under Chapter X of the Bankruptcy Act.

On May 3, 1954, the debtor filed a voluntary petition for reorganization in the district court in which it alleged its inability to meet its debts as they became due, and in which it requested the appointment of a trustee to operate its business and manage its property. The United States filed proofs of claim for federal withholding, excise and employment taxes.

The trustee filed an amended plan of reorganization on June 23, 1967. The plan provided that the tax claims were to be satisfied by payment of 10% of the amount of the claims in cash within six months from confirma-

[1] The writer of this opinion is sitting by designation from the United States District Court for the Eastern District of Wisconsin.

tion, and by payment of the balance, without interest, in 78 equal monthly installments. The installment payments were to be secured by an assignment of the note and chattel mortgage on the debtor's operating rights, which documents were signed by Hennis Freight Lines, Inc., the purchaser of said operating rights. The amount of the note is substantially in excess of the amount owed in connection with the federal tax claims. The unsecured creditors were to be paid 20% of their claims in cash within six months of confirmation; certain wage claimants and also certain state and local taxes were to be paid in full. This amended plan did not contemplate the continued existence of the debtor.

Previously, the district court had approved the agreement between the debtor and Hennis Freight Lines, Inc., whereby Hennis agreed to purchase all of the debtor's operating rights for an amount not to exceed $935,000, payable $300,000 within 90 days of approval of the sale by the Interstate Commerce Commission, and the balance payable in 78 equal monthly installments. The I.C.C. hearing examiner recommended that the transaction be approved, subject, however, to certain modifications in the operating rights. The I.C.C. issued its order on March 11, 1965 approving the hearing examiner's findings.

The United States filed a timely notice of rejection of the amended plan on November 20, 1967. Following a hearing, the district court issued an order confirming the plan; it found that the debtor was insolvent; the plan was fair, equitable and feasible; and that the plan afforded adequate protection to the United States and to the state and local tax creditors by the assignment of the note and chattel mortgage executed by Hennis. The United States now appeals from the order of confirmation.

The issue presented on this appeal may be stated as follows: In a corporate reorganization under Chapter X, is a plan which provides for payment of the government's tax claims by installment payments without interest "fair and equitable", or is the government, in addition to such payments, entitled to receive its funds

prior to the time payment is made to lesser ranking creditors?

Section 199 of the Bankruptcy Act (11 U.S.C. § 599) provides that

> "If the United States is a secured or unsecured creditor or stockholder of a debtor, the claims or stock thereof shall be deemed to be affected by a plan under this chapter, and the Secretary of the Treasury is hereby authorized to accept or reject a plan in respect of the claims or stock of the United States. If, in any proceeding under this chapter, the United States is a secured or unsecured creditor on claims for taxes or customs duties (whether or not the United States has any interest in, or claim against the debtor, as secured or unsecured creditor or stockholder), *no plan which does not provide for the payment thereof shall be confirmed* by the judge except upon the acceptance of a lesser amount by the Secretary of the Treasury certified to the court. . . ." [Emphasis added.]

Section 216(7) (11 U.S.C. § 616), provides in part as follows:

> "A plan of reorganization under this chapter
> ". . .
>
> "(7) shall provide for any class of creditors which is affected by and does not accept the plan by the two-thirds majority in amount required under this chapter, adequate protection for the realization by them of the value of their claims against the property dealt with by the plan and affected by such claims, either as provided in the plan or in the order confirming the plan . . . (d) by such method as will, under and consistent with the circumstances of the particular case, *equitably and fairly provide such protection*. . . ." [Emphasis added.]

In addition, it is stated in § 221 (11 U.S.C. § 621) that the judge shall confirm a plan "if satisfied" that the provisions of § 199 have been complied with and the plan is "fair and equitable, and feasible".

The government contends that these sections, when read together, support the position that a plan which requires the government to wait 6½ years without interest for full payment and which permits, in the interim, payment to lesser ranking creditors, is not fair and equitable. The trustee maintains that the plan involved here adequately assures payment in full of the government's tax claim in a fair and equitable manner and urges that this is all that the applicable statutes require.

Section 199 does not prescribe a particular method of payment. It merely states that the district court shall not confirm a plan "which does not provide for the payment" of the government's tax claim, unless the government accepts a lesser amount. Nor do §§ 216(7)(d) or 221 adopt a specific method of payment; rather, they are couched in terms of "equity" and "fairness". As stated in 6A Collier, *Bankruptcy*, ¶ 10.17, pp. 490-491 (14th Ed. 1965), in speaking of § 216(7)(d):

> "It has been said that these methods, properly speaking, are not 'methods' at all, but merely, empower the judge, who must approve and confirm the plan, to approve any means of treatment which under the particular circumstances 'equitably and fairly' affords adequate protection to the dissenters."

Unlike the foregoing statutes, other chapters of the Bankruptcy Act do expressly provide that the government shall be paid in cash. For example, see § 64(a)(4) [11 U.S.C. § 104(a)].

The government stresses the importance of R. S. § 3466 (31 U.S.C. § 191) and contends that it entitles the United States to immediate payment. Section 3466 provides that

> "Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, *the debts due to the United States shall be first satisfied;* and the priority hereby established shall extend as well to cases in which a debtor, not

> having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed." [Emphasis added.]

The government urges that § 3466 applies in Chapter X matters, which are not conventional bankruptcy proceedings. *United States* v. *Anderson*, 334 F.2d 111 (5th Cir. 1964); *Lowden* v. *N. W. National Bank*, 298 U.S. 160, 163 (1936). There are a number of cases in which the government's priority under § 3466 has been recognized in equity receivership proceedings, but such cases did not involve Chapter X. *Price* v. *United States*, 269 U.S. 492, 499 (1926); *United States* v. *Butterworth-Judson Corp.*, 269 U.S. 504, 513 (1926); *Spokane County* v. *United States*, 279 U.S. 80 (1929); *New York* v. *Maclay*, 288 U.S. 290 (1933).

A case in which the court did apply § 3466 to a Chapter X matter is *United States* v. *Anderson*, 334 F. 2d 111 (5th Cir. 1964). By a divided court, the court of appeals for the fifth circuit decided that the government's *non-tax* debts were to have priority. However, the court did not specify whether such non-tax claims were entitled to "payment in full" or to "first satisfaction".

It seems to us that if § 3466 is applied to a Chapter X plan, the "fair and equitable" provisions of §§ 216 (7) (d) and 221 are effectively contradicted. Section 199 bars the court from confirming a plan "which does not provide for the payment" of tax claims—unless the Secretary of the Treasury assents. Section 216(7) states that a plan under Chapter X shall "equitably and fairly provide" adequate protection for "any class of creditors which is affected by and does not accept the plan". Section 221 provides that the judge shall confirm the plan if the requirements of § 199 have been complied with and the plan is "fair and equitable, and feasible". In our opinion, these three latter sections govern tax claims of the United States in Chapter X proceedings.

The specific provisions of §§ 199, 216(7)(d) and 221 of Chapter X cannot be fairly construed to require, as a matter of law, that a plan insure the government total satisfaction of its tax claims *before* other creditors receive anything, as a condition precedent to the plans being "fair and equitable".

Within Chapter X, §§ 199, 216 and 221 are interrelated statutes and part of a studied statutory plan. Section 199 outlines the nature of the government's tax claim "priority", and the two other sections establish an equitable standard to govern the method of payment. If, as the government would have us hold, § 3466 creates an absolute right to first payment in addition to full payment, there would be little need for §§ 199, 216(7) and 221. These sections apply specifically to Chapter X proceedings and should control over the more general and conflicting direction of § 3466. *Baltimore Nat. Bank* v. *State Tax Commission of Maryland*, 297 U.S. 209, 215 (1936) and cases cited therein.

In the case at bar, the approved plan contemplates that the United States will be paid in full, and the record supports the trial court's conclusion that the plan affords reasonable protection to the government. The district court had the benefit of its own fact-finding, as well as that of the I.C.C., with respect to the value of the operating rights and the ability of the buyer to make payments under the plan. These factual determinations have not been specifically challenged here.

We hold that the trial court did not err in permitting lesser ranking creditors to receive payment simultaneously. Under the plan, the government does not surrender its right to full payment.

The government maintains that it is receiving only a "discounted value" of its claim because it does not receive interest, and it must wait 78 months for full satisfaction. The absence of interest is not a controlling factor here, for the law is well settled that the government is not entitled to post-petition interest on its tax claims in these proceedings. *United States* v. *Edens*, 189 F. 2d 876 (4th Cir. 1951), *aff'd per curiam*, 342 U.S.

865 (1952); *City of New York* v. *Saper*, 336 U.S. 328 (1949); *In re Kerber Packing Co.*, 276 F. 2d 245 (7th Cir. 1960).

The record sufficiently supports the district judge's exercise of the discretion vested in him under Chapter X. The order of the district court confirming the amended plan is affirmed.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
CHICAGO, ILLINOIS 60604

Thursday, February 27, 1969

Before

Hon. THOMAS E. FAIRCHILD, *Circuit Judge*
Hon. OTTO KERNER, *Circuit Judge*
Hon. MYRON L. GORDON, *District Judge*

In the Matter of

HANCOCK TRUCKING, INCORPORATED, Debtor
UNITED STATES OF AMERICA, APPELLANT

v.

SHELDON A. KEY, TRUSTEE, APPELLEE

Appeal from the United States District Court for the Southern District of Indiana Indianapolis Division

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Indiana, Indianapolis Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the order of the said District Court confirming the amended plan, in this cause appealed from be, and the same is hereby, affirmed, in accordance with the opinion of this Court filed this day.

SUPREME COURT OF THE UNITED STATES

No. 402, October Term, 1969

UNITED STATES, PETITIONER

v.

SHELDON A. KEY, TRUSTEE

ORDERING ALLOWING CERTIORARI. Filed October 20, 1969

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1969 369260 340